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Introduction

“It’s a serious matter, this matter of justice. ‘Justice’, asked the young man, ‘where is she?’” The older man said, ‘She’s asleep.’ ‘As long as she wears a blindfold, she cannot see injustices to the poor and the needy.’ Who will remove her blindfold?”

Because justice is fundamental to a civil society, the topic is of interest to every segment within the society. Perception of justice is important because a person’s beliefs or perceptions drive their behavior. In this work, we seek to uncover perceptions of law students, lawyers and judges as regard quality of justice. We have been drawn to this inquiry in part due to reports in the movies, newspapers and television about justice going amuck. For example, O. J. Simpson’s high profile trial during the mid-1990s raised many questions as to whether justice in America is colorblind. When the not-guilty verdict was announced, camps formed around racial lines. A large number of whites made their feelings known by accusing the jury of a miscarriage of justice. Many, if not most African Americans, however, jumped for joy at the reading of the verdict.¹ Some

¹ It is not surprising the different responses of whites and blacks. Such polls as Gallup, CNN and *USA Today* showed a marked difference between perceptions of whites and blacks as to Simpson’s guilt or innocence. See Seth Mydans, *In Simpson Case, an Issue for Everyone*, *N. Y. Times*, July 22, 1994, where whites thought Simpson to be guilty by a 62% margin while blacks agreed at the lower level of 38%. The news media played up the differences between African Americans and whites. Talk shows pitted one side against the other. Each side believing they were right lashed out against the other with a barrage of verbal assaults. The behavior of African Americans and whites demonstrated that the two view things from a different perspective. In *Miami: The Place Where Cultures Meet*, (1995) Hunt points out that these different views are a function of the different socializations of the two indicating that blacks as a class of oppressed people look at things from the bottom up, while whites, the oppressors, look from the top down (p.42).

saw the not guilty verdict as an indication that a black person could, at last, receive a fair trial in America.

Jay Nash, (1992, p.202) an expert on criminal justice, defines justice to mean “administration and enforcement of just principles and regulation, example, by those determined to provide an impartial view of what is right and wrong”. In the United States, the system designed to secure justice is an adversarial system. In the context of criminal justice, it is a system of rules and procedures, where a lawyer called a prosecutor argues on behalf of the one who brings a charge (plaintiff) against the accused (defendant). An impartial judge (administrator) is said to rule over the proceedings. The adversarial nature of the system tends to pit one side against the other in a win or lose contest. Like warriors in the Coliseum of Rome, their major goal is to win even if it means fighting dirty.

Milton Meltzer, (1990, p.120) also a criminal justice expert, states that many critics believe that the adversarial system does not produce justice. He asks, “Whom does the system benefit?” and answers, “Usually the rich and the powerful, say the critics. They can buy the expert counsel necessary to win.” Meltzer goes on to say that the system seems to have been created for “people who love to fight, not those who love peace”.

As pointed out above, the so-called impartial judges within the justice system are not above criticism. Like others in the society, their perceptions of justice are related to cultural factors often associated with economic status--a point that we will discuss later in this chapter. The twin issues of advocacy and activism for sectors of the society, who have been denied justice call into question what the judges' role should be. Camps have

formed on both sides of these issues. The ones who believe in judicial activism are called liberals; those who are against are called conservatives. Kairys, (1993, p.3) another expert in criminal justice, has written that when liberal judges and lawyers predominated, “The liberal courts intervened to prevent other parts of the federal, state, or local governments from intruding on the people. And they did so in the absence of prior authority and often in spite of established rules and precedents to the contrary. These two factors—intervention and innovation—characterize judicial activism”

According to Kairys, “Conservative judges and lawyers have attempted to reverse this judicial protection of the people from the government. As a result, the government now has enhanced power to intrude in matters usually thought to be within the essential domain of American freedom. Clearly two different views can be seen in the debate between those who advocate for liberal and conservative roles for judges. Does one or the other point of view aid or detract from justice? This is one of the questions we seek to answer in the present research.

What do we know about judges who hold so much control over the lives of Americans? The average person knows very little. Meltzer has written the following: “Who are the men and women who possess these powers? They are ordinary mortals, neither saints nor devils. The large majority are white Protestant males, middle-aged, coming from well-to-do families. They have few or no ties to the poor, to minorities, or to the victims of social injustice”. Given this demographic, we are also interested in learning court officials’ perceptions as to how well the highlighted groups (women, African Americans and the poor) fair in courts seeing so little is held in common (with the exception of women) between the judges who hear their cases and them.

Like lawyers and judges, law students will one day become officers of the courts. As such we are also interested in their perceptions of justice. Much that they believe about justice is formed before entering law school, but law school no doubt plays an important role in helping to form their judicial perspectives or perceptions of justice. With so much criticism about the justice system being unfair, one wonders whether law students are taught to seek justice in their training. One must admit that the question seems oxymoronic if they are trained to conform to the adversary system of justice, and they are. Law students are taught that the law focuses on “what is” not “what should be”. One of your authors during his freshman year of law school recalls a fellow student inquiring as to how justice is taught in law school education. The inquisitive student was quickly told by the instructor, “We don’t deal with that here, we deal with what is. We teach why it is the way it is.”

Whether the focus of justice should be on “what is” rather than on “what “ought” will no doubt be debated for sometime to come. At the heart of the debate, however is the fairness of the U. S. criminal justice system. Hugo Bedau and Michael L. Radelet (1987) have pointed out that 350 Americans were mistakenly convicted of capital offenses between 1900 and 1985. Of this number, 23 were put to death and many other were saved only at the very last minute (pp. 21-179). In a civil society when someone is denied justice, it should be a concern to all others. When hundreds of people are denied justice, it should call into question the fairness of the justice system. What is going on in our criminal justice system? Do we have a system that is incapable of discerning the guilty from the innocent? Just how fair is the system? This is another question of interest in the current research.

We know that judges study cases before them. Attorneys from both sides argue points of law, but in the end the judges render decisions based on their interpretative frames of references. If more judges are persuaded to agree with the argument of one side or the other, it is more likely that the argument falls within the acceptable interpretative framework of the judges. The judges will no doubt reject anything outside their interpretive frames of references. This is why judges can be labeled as liberal, centrist or conservative.

This brings the discussion back to perceptions. How a person interprets things depends on what that person has learned as good, right and proper. It is in the interpretative area where culture plays an important role, and the interpreter is no better or worse, than the values instilled in him or her in childhood.

This book, *The Administration and Practice of Justice*, is a collaborative work of two lawyers and a professor of public administration. We have seen justice denied some, among them being women, the poor and minorities, and we have seen men and women stand up for the best in the justice system. The book is in three parts. Part One is an empirical study entitled *The Administration of Justice*. Part Two is polemic including chapters dealing with *The Administration of Justice*, *Justice That Sees*, *The Judge Who Would Do Right*, and *How Money Rules Justice*. Part Three is an *Administration of Justice* training manual. The purpose in writing the book is heuristic; it seeks to ascertain what accounts for the lack of justice among those who are sworn to uphold justice. The research question asked is: **To what extent does permissiveness in interpreting the law influence perceptions as to the quality of justice rendered by officials?**

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Part I
Chapter 1
Judicial Empiricism
The Justification of the Problem Under Study

The purpose of this study is to present information which tests the hypothesized relationships among the variables introduced in the study. In doing so, the empirical pattern of the quality of justice will be spelled out. After establishing the pattern of empirical facts regarding the quality of justice, the researchers will then associate those finds with other subgroup variables. While the study is primarily theoretical, it offers practical implications.

Statement of the Problem

The question this study seeks to answer is: To what extent does permissiveness in interpreting the law influence perceptions as to the quality of justice administered by officials?

Independent variable is the extent of permissiveness in interpreting the law;
Dependent variable is the perception of the quality of justice administered by officials.

Permissiveness In Interpreting the Law

The *World New Dictionary* defines permissive as “not forbidding; tending to permit.” As regard the present study, it does not approach permissiveness negatively. Permissiveness is associated with interpreting the law; it is the degree of freedom one allows in interpreting the law.

Just as there is a literal interpretation of law, there is a spirit of the law, which refers to the intent. The intent of the law is not on the literal rendering of the lawgiver's words but rather on his or her meaning or purpose. A very basic example follows: Wild animals that are drawn by the smell of food attack several picnickers at a local park. As a consequence, the lawgiver proclaims from this day forth: "eating food within the park shall constitute a misdemeanor, punishable by not more than six months in a county jail." Now, assume that the lawgiver's intent is not to suggest that eating in the park is bad per se, rather, his/her intent is to insure the safety of picnickers from wild animal attacks. A letter approach ignores the purpose of the law and focuses solely on the words. A person using such an approach need not be concerned with why the law was enacted, and, as such, even the lawgiver becomes subservient to his or her own law.

In the aforementioned example, imagine that the wild animals were moved to a special sanctuary established to preserve wildlife. A literal reading of the law proclaims eating food within the park to be a bad act, irrespective that the harm sought to be prevented no longer exists.

The above discussion points out the two different perceptions in interpreting the law: the letter and the spirit. Advocates of the letter or literal approach to interpretation argue that laws have a plain or clear meaning. However, no matter how seemingly plain laws may read, reasonable minds may differ. The solution posited by some legal positivists is to make laws as specific as possible to eliminate the possibility of divergent readings of laws. However, more specificity leads to what is termed, the "paradox of precision" which, simply stated, means that the more precise laws become, the more

loopholes that become available. Therefore focus here is not on the lawgiver's words but rather on his or her meaning or purpose.

Another pertinent issue is the fact that subjectivity plays a large role in interpreting the law. This should not come as a surprise because views or perceptions are culturally based, being influenced usually by a trusted one. Sociologists described this as the socialization process (teaching the uninitiated the ways of the society). Schaefer and Lamm dichotomize socialization into anticipatory socialization and resocialization. By anticipatory socialization they mean the "processes of socialization in which a person 'rehearses' for future positions, occupations, and social relationship." Resocialization "refers to the process of discarding former behavior patterns and accepting new ones as part of a transition in one's life". While these processes are practiced in all societies, not everyone is interested in the general welfare of all in the society. As a consequence, some people may be manipulated into favoring view, based not on objective fact, but, rather, their perceptions.

When Degree of Permissiveness in Interpreting the Law is trichotomized (high = liberal, moderate = centrist and low = conservative), and the official's view of the law is dichotomized (strict constructionist, liberal), a cross-classification yields three empirical types (see Typology I). From the discussion above, we have identified court officials who seek the intent of the lawgiver in interpreting the law; those who sometimes seek the intent of the lawgiver but most times interpret the law literally; and those who routinely use a liberal interpretation of the law. Permissiveness is thus seen as high when the subjects of this study interpret the law seeking the intent of the lawgiver; moderate when

the intent of the lawgiver is sometimes sought, but most times, allowing the law to stand as written; and low when a literal meaning of the law is subscribed to.

TYPOLOGY I

Typology of Permissiveness in Interpreting the Law

Official's Degree of Permissiveness in Interpreting the Law

Official's View of the Law		<u>High</u>	<u>Moderate</u>	<u>Low</u>
	Liberal			
	Strict Constructionist			

Perception of Quality of Justice

Reiman (1985) tells us: "At each step, from arrest to sentencing, the likelihood of being ignored or released or lightly treated by the system is greater the better off one is economically.¹ He goes on to say: "For the same criminal behavior, the poor are more likely to be arrested; if arrested, they are more likely to be charged; if charged, more likely to be convicted; if convicted, more likely to be sentenced to prison; and, if sentenced, more likely to be given longer prison terms than members of the middle and upper classes" . Reiman further points out "numerous studies have shown that African Americans are more likely to be arrested, indicted, convicted, and committed to an institution than are whites who commit the same offenses."

The fact that inequality of justice exists is grounds to consider it in this study. Unlike the facts cited by Reiman , however, the present study is interested in judges, lawyers and law students' perceptions of the quality of justice. Facts tell "what is." Perceptions point to "why it is." This study is interested in the root cause of inequality of justice, and it is believed that cause can best be realized by learning what officials of the court believe to be true.

Perception is not open so all can see. It is a covert process based on the environment fostered by significant others in the life of the one perceiving. For example, if a person has grown up in an environment where great emphasis was placed on being punctual, that person will likely view in a negative light, people who routinely show up for meetings late.

How a person perceives a thing is, in fact, that person's reality.² For example, Coser and Rosenberg write about "The Thomas' Theorem," which states that: "It is essential in our study of any matter to find out how men define situations in which they find themselves.... If men define situations as real, they are real in their consequences." Thus, perception is a discriminatory or selective process involving past experiences, motives, expectations and repetition demonstrated by an individual's reaction or response to something or someone.

For the purpose of this study, perception is associated with the quality of justice administered by officials. Quality of justice is a very hot issue in society. Some believe

² It is also true that people believe what significant others tell them about matters of which they have little understanding. This is true regarding litigants' perceptions as regards justice. Even when people are well versed in a field, there is no foolproof system to ward off bias.

the courts are fair to all and others, like Gerry Spence, espouse a doctrine that justice does not exist in America.

When “quality of justice” is trichotomized (very fair, somewhat fair, unfair) and “whether subjects feel the justice system is just” is dichotomized (yes, no), a cross-classification yields three empirical types (see Typology II). Quality of justice is said to be very fair when each person is judged as an individual based on the merits of the case; somewhat fair when special treatment is given to certain people but most are judged as an individual based on the merits of the case , and unfair when bias judgment against any class of defendants occurs.

TYPOLOGY II

Typology of Perceived Quality of Justice

Quality of Justice

Whether subjects feel the justice system is “just”		Fair	Somewhat Fair	Unfair
	Yes			
	No			

This study limits its definition of officials to mean judges. Judges are administrators of the court. Perhaps more than any other officials, they have the public’s respect. Yet, this trust is being breached, it seems, more and more. For example, an editorial published in *The Miami Herald* cites a lack of public controls on judicial performance. The editorial spoke of the limited staff to police errant judges by the state

Judicial Qualifications Commission in citing an incident in which recommended that Broward judge be removed for bending the law to help drunk drivers.

To check errant behavior, it is first necessary to establish that errant behavior exists. In the present study, judges are singled out for study because they sit at the top of the criminal justice system/hierarchy. If they are in error, how can they administer justice to the public? By looking at the perception of the quality of justice by lawyers, judges and law students, vis-a-vis judges, a pattern of perceived justice will be uncovered. This pattern can then be measured against the actual justice. Policy recommendations may then follow.

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Chapter Two

Theoretical Justification of the Problem

The environment in which we live influences our behavior. To explain behavior, a number of factors must be considered, including the individual's personality, needs, situations, drives, values, and perspectives. Values and perspectives go hand and glove; in some cases values drive perspectives, and, in others, perspectives help to shape values. In addition to these, the situation in which the person acts is also important. The situation or state of affairs under discussion is the gulf between the espoused value of justice by court officials within the justice system and the lack of justice in practice for many Americans. In this study behavior is the perception of quality of justice and its relationship to permissiveness in interpreting the law. The theoretical framework used is praxis.

Praxis is a Greek word literally meaning action, directed action, or action efficiently accomplished--action that has a profound or divinely inspired effect upon people. We begin with a short history of the concept and then show its popular use. Afterward, we tie the praxis theory to the disconnected principle of "equal justice for all" espoused by the U.S. Constitution and the practice of injustice too often found among certain elements of the society. Bernstine writes that praxis took on more or less a technical meaning under Aristotle, being characteristic of what free men did in the polis or city-state. It was the ideal in exercising full citizenship. Howard has written, "In this sense praxis is related to practice, where practice means the systematic and correct exercise of a discipline including its ethical as well as its technical dimensions."

Praxis is rooted in the experiences of a people in their culture. In this sense the experience (practice) produces (theory) the way we see the world.

As part of the critique of logical positivism, i.e., of the overuse of natural science models to study social behaviors, White introduced the idea of praxis in the Public Administration field. He noted that science was too preoccupied with theory building, hence too separated from practice--especially as applied to government. "Administrative Praxis," as White termed it, calls attention to the need to reunite theory with practice. He reasoned that no matter how coherent the theory, it is the commitment to putting it into practice that mattered. In his thinking, administrators should serve as mediators to bring theory and practice into greater alignment while assuming a moral responsibility for acting out explicit values.

Howard and Hunt stress that praxis is a way of right action, which is open, creative, normative, and participative. Given the deepening crisis in Public Administration, they advanced praxis as an alternative to the theory and practice of cooperative action in order to minimize the inherent coercion in government.

Praxis, in a popular sense, refers to a closer alignment between theory and practice. When liberating deeds follows a person's words, praxis is evidenced. As one can see, the focus is on acting, but not just any action; right action is the goal. Right action occurs in the present study when justice is forwarded for those previously denied it.

This brings us to a discussion of praxis as it relates to the present study on the relationship between perceived quality of justice and permissiveness in interpreting the law. Can you see the contradiction between the following maxims? 1) Justice (fair play)

is a value Americans treasure 2) Many people in the United States are denied justice (treated unfairly) These contrasting maxims point to a gap between what Americans say they believe and what they practice. This dualism is evidenced in our justice system. It is rooted in the American way of life from the early days of the country. No less a figure than Thomas Jefferson, who penned the Declaration of Independence, typified as much.

Consider Jefferson's words about justice (fairness) found in the Declaration of Independence. His focus was on *all men* being created equal, having a right to life, liberty and the pursuit of happiness. Men and women throughout the Western World revere Jefferson's words. Herein is the problem: Jefferson was an owner of slaves at the very time he spoke about *all men* being created equal and having rights, etc.³ His lofty words about freedom and justice did not translate into the deliverance of his slaves from their bondage.

Regarding our present study, some court officials, like Jefferson before them, appear to hold a dualistic view of justice. On the one hand, justice is defined as following orderly procedurals as outlined in such documents as the Constitution. On the other hand, they are aware that money is able to buy justice. The results being unequal justice because people with money are cleared of wrongs while others without money are found guilty.

Let us return to White's thought that administrators should serve as mediators to bring theory and practice into greater alignment. In order for administrators to serve as

³ Recent DNA tests conducted at Oxford University and published in the British journal *Nature* in 1998 indicate that Thomas Jefferson fathered at least one child with a slave he owned. Historians have long known about Jefferson alleged affair with his slave, Sally Hemings. Many, however, have been in denial about the matter because they esteemed Jefferson's to have been a morally sound person even a hero for their children. A website that seeks to exonerate Thomas Jefferson of these allegations can be found at: <http://www.angelfire.com/va/TJTruth/>

mediators, they must first recognize that unequal justice exists in the American justice system. That some do not recognize injustices within the justice system, this research argues, is a testament to their blindness born of a meta value akin to dualism—a gulf between what they say they believe and what they actually practice.

Mediation (praxis) is a bridge between the concept of equal justice and the practice, where justice is denied. Mediation provides an atmosphere where dialogue can take place between warring parties. If administrators are to become mediators per White's call, they must first recognize that they are members of the warring parties (theoreticians and practitioners). Moreover, they must also acknowledge that some of them espouse the justice dualism meta value.

How does mediation break down the divide between warring parties? Finding agreement between the parties and being willing to work out their differences, the mediator attempts to foster agreement between the warring parties. The goal of mediation is unity. Therefore, unity must characterize every facet of the mediator's work. The mediator, as a type of role model and mentor to the warring parties, must demonstrate the need for unity by his words (theory) and his deeds (practice). Only by working together in a spirit of agreement, having mutual respect for each other, can administrators become mediators.

As stated before the theory of justice (equal justice under the law) and the practice of justice (lack of justice for some) are brought together in praxis. How does this relate to the current research? The problem under study is permissiveness in interpreting the law and its relationship to quality of justice. Permissiveness in interpreting the law can be seen as theory while quality of justice is what officials do or what they practice. As

indicated above, the theory is not always in keeping with the practice. Also indicated above, praxis insists on the theory, equal justice under the law, being realized in the practice of justice.

Now add perception to the equation. Perception tells how the person views a thing. As the person defines the situation, he or she will act in accordance therewith. If person "A" perceives the justice system as being fair for all, when it is in fact not, his or her actions, based on a false perception, will more than likely continue to deny some justice not knowing it is so. As such, his or her theory of equal justice will not be verified in practice. Praxis seeks to bring the theory in line with the practice. In other words, person "A" would have to be educated as to his or her faulty perception as a first step toward changing the injustice which he or she had not previously seen.

Hermeneutics is central to an understanding of praxis. *The World Book Dictionary* defines hermeneutics as "the science of interpretation, especially the branch of theology that deals with the principles of Scriptural interpretation." Praxis as action is connected to the past, but we hasten to add that it does not dwell there; it gives direction to the future. The key to understanding the messages of the past is an ability to touch the heart of the speaker. Words, in the hermeneutic view, aid in unlocking the past in order to direct what the future should be. This thought is related to the present work in that there are different views about how laws should be interpreted. In the current study, one group focuses on a literal interpretation while another seeks the lawgiver's intent. The latter group is closer to the idea of praxis than the former. The idea embedded in the law is the theory; the unbiased meaning worked out in the justice system is its practice.

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Chapter 3

Specification and Justification of Intervening variables

Lewin wrote many years ago that behavior is a joint function of the person and his environment. It is necessary, therefore, to examine perception of quality of justice in relation to variables other than permissiveness in interpreting the law. Such variables as race, sex and economic status are significant since research reveals these variables to be important in having an impact on quality of justice. The current research uses race, sex and economic status as intervening variables.

Viewing quality of justice from the general level of the criminal justice system, several empirical studies using sociological and psychological variables fall to hand. Many scholars have studied jury venire lists for racial, sexual or economical bias. To the extent bias is shown in any part of the criminal justice process, it shows possible bias in other parts. A few of these studies have been included for reference purposes.

Nick Davies' terrifying story of rape, murder and racial injustice in a small Texas town recounts the trial of a black school janitor convicted of raping and murdering a white teenage cheerleader. The book describes the process of unraveling the lies, deceptions, and racism underlying the black man's conviction. Injustice of the criminal justice system is highlighted in one Texas community, but it could have been practically any community in America. Blacks charged with sex crimes against white women, as in Davies' work, all too often have had to face an emotional criminal justice system, presided over mostly by white men. In too many cases, juries appeared to have been making a statement about "white honor" and not focusing on apprehending the

perpetrators of the crimes.⁴ When this occurred, and it has frequently, both black males and white females are denied justice.

In this one Texas town, those sworn to uphold law became lawbreakers. The judges and prosecutors no doubt did not see themselves as being racist or corrupt. They saw themselves as men doing the will of their friends and neighbors who were white. The facts, however, clearly showed they were both racist and corrupt officials.⁵

Part of the problem had to do with demographics. Author Judith Resnik points out the serious nature of the problem by highlighting the absence of women and blacks as judges in the state courts. Of 28,000 judges only 9 percent were women in 1991 and black women were very scarce (p. 189). For example, Florida, one of the largest states in the Country, showed “1 percent of all the judges in Florida were women of color, none of whom sat on appellate courts (p. 191). The absence of women and blacks serving as

⁴ Witness the case of Susan Smith, the young white mother, convicted of killing her two small children in Union, South Carolina. Smith told authorities that a black man had stolen her car with the children inside. Why did she choose a black man as the perpetrator of the crime? Could it have been that she understood the emotional reactions of whites in the past when blacks were accused of crimes against whites? Perhaps she recalled how Boston’s police rounded up blacks on the words of Charles Stuart who killed his pregnant wife, Carol Stuart, in Boston, Massachusetts, in 1989. In both cases, the officials of the states harassed countless black men fitting the description of the phantom criminals. For a discussion of the Susan Smith case, see: <http://www.time.com/time/magazine/archive/1994/941114/941114.cover.html>

⁵ When gender is a factor in crime, especially when a white woman is the victim and a black man is accused, historically courts have favored the white woman over the black man. It is therefore understandable that the media paid so much attention to the O. J. Simpson trial. Never in the history of America was so much attention given to a murder trial. To the shock of many whites and the delight of many blacks, O. J. Simpson was found not guilty. The not-guilty verdict of the jury caused the dormant deep division between blacks and whites to surface. People who had tolerated each other over time, even calling one another friends, were faced with strong feelings either for or against the verdict. Polls indicated most whites tended to think that O. J. was guilty while most blacks thought him to be not guilty. Perceptions find their way into courthouses. Jury rooms are not immune from perceived notions about people or things. People act on the perception of facts not the facts themselves. So it was that many whites saw the case through one set of eyes and many blacks through another. The O. J. Simpson verdict has been viewed as a statement about the lack of social justice to blacks in America. The reasoning goes that the justice system is not fair to minorities and now that blacks are on juries, they simply do the same thing whites have done over the years in finding white defendants not guilty when the evidence clearly points to guilt.

judges impacts quality of justice.” Resnik shows as much by reporting on the findings of several state task forces on racial and ethnic bias beginning with the task force in the State of Washington. The task force concluded that in the criminal process, people of color are “more likely to be held in custody pending sentencing than whites.... On the civil side, Washington’s task force reviewed outcomes in personal injury litigation about asbestos injuries; after controlling for age, type of disease, and workplace, that task force concluded that ‘minorities had a statistically lower average settlement (\$74,350) than non-minorities (\$119,560)’” (p. 193). The lack of justice along racial and sex lines can also be seen where economic status is concerned. A brief literature review of each of these intervening variables follows.

Race

Morgan defines races as “a group of human beings having common and distinctive innate physical characteristics.” Glenn M. Vernon has grouped the races as follows: Caucasoid or white, Mongoloid or yellow and Negroid or black. Since the earlier works of Morgan and Vernon, race has been given greater divisions.

What is meant by race in a sociological sense? Sociologists tell us that racial groups can be distinguished on the basis of obvious physical differences. For example, “Whites, Blacks, and Asian Americans are all considered racial groups in the United States”. (Schaefer & Lamm,;) This simple biological definition, however, hides more than it illuminates. Whites are “white” not because they are white, and blacks are “black” not because they are black; we must look deeper for what makes up race. What makes white people white is that someone has defined them as such, and the same is true

for blacks. “Whiteness” and “blackness” are not intrinsic concepts, but rather, they are social. This means that obvious is not always obvious in assigning people to different races. This is especially true when a person assigned to a given racial group does not bear the features of that group. For example, when a black person’s skin color is lighter than their next door neighbors who are white or vice versa, how could such a “white” person really be black? Historically, any one with an iota of black blood in the U.S. has been defined as black.

As such, race is a pervasive, all consuming, social construct invented for nefarious purposes. Maghan Keita argues that the “conventional epistemology of blackness is a construction of the modern age.” In the so called “Age of Enlightenment which brought with it notions of science, progress and race” history not only became the propaganda tool of the dominate group; it used science to justify inhumane treatment of people of color. Finding it to their economic and moral advance, Western society “enlightenment” brought about the idea of “blacks as fundamentally, inherently, biologically, both infantile and bestial.”

Westhauser agrees with Keita as to the recentness of race. Looking back to 17th century England, he writes:

Competition between differing visions of race relations in this early period serves as a useful reminder that race is a way of seeing ourselves, a cultural artifact. Further research is needed to explain why people choose racism, Jordan’s ‘unthinking decision,’ if clear alternatives were already available? And why did other people choose a multicultural vision, when the deck was stacked against it?...While some view multiculturalism as an assault on ‘traditional values,’ comparative historical perspective suggests the opposite: In England, nothing was more traditional than the medieval pageantry of London’s Lord Mayor’s Day, and that civic tradition embraced a multicultural vision over three centuries ago. (Westhauser:120)

Additionally, Stringer and McKie have written:

The realization that humans are biologically highly homogeneous has one straightforward implication: that mankind has only recently evolved from one tight little group of ancestors. We simply have not had time to evolve significantly different patterns of genes. Human beings may look dissimilar, but beneath the separate hues of our skins, our various types of hair, and our disparate physiques, our basic biological constitutions are fairly unvarying. We are all members of a very young species, and our genes betray this secret.

If humans “basic biological constitutions are fairly unvarying”, there is no compelling reason to believe that one group of humans is superior or inferior to others⁶. As previously stated, above race is a social construct invented for nefarious purposes, which suggests that race is a social phenomenon enslaved to cultural vicissitudes. In other words, how people see race is dependent on what they have been taught to see. Again this is the work of socialization. Socialization is one determinant of racial perspectives and is related to culture, yet another determinant, in that the group members are socialized into a particular way of life in a particular culture. Necessary conditions of culture and socialization, which are also treated as determinants of racial perspectives, are morality and the philosophical belief system of society.

For the purpose of the current study, race refers to Anglos, African Americans and Hispanics. South Florida is one of the most diverse places in the U.S. It is the diversity that makes it a potent target to study perceptions related to quality of justice especially where white-black and Hispanics are involved. While races can be distinguished based on biological factors, racial preferences are acquired, not inborn.

⁶ Joseph Graves' work *The Emperor's New Clothes: Biological Theories of Race at the Millennium* is an excellent source. In this book, Graves provides an excellent listing of important geneticists and biologists who rebut the historical claim that there exists a correlation between race and ability.

Acquired racial preferences have led some people to believe their race to be superior over all others.⁷

Just like racial preferences are acquired, so are perceptions. White and blacks have acquired different perceptions on the matter of justice in America. Hunt, Bishop and Howard's 1979 cultural study of administrators points out the different views held by Anglos and African Americans about accountability. One question of importance to the present study dealt with perceptions of black and white administrators regarding accountability among black administrators. "As a first choice, black administrators said they were accountable first to the black community. White administrators—as a first choice—saw themselves as accountable first to the place where they worked" (pp. 61-71). The authors concluded:

Taken together these questions asked directly to black and white administrators bring out points of conflict between the culture of administration and black culture, which corroborates the 1972 findings reported by Ermer and Strange. Within the culture of administration the split between blacks and whites over Theory X and Theory Y—with blacks more Theory X in outlook—breaks entirely new ground heretofore unreported in the literature (Hunt, et al.: 74).

Relating race to the present study, Chiricos and Crawford examined results from black-white differences in incarceration among 38 state courts published between 1975-1991. Their focus was on in/out decisions and sentence-length decisions. They found that "race is a consistent and frequently significant disadvantage for blacks when in/out decisions are considered" (p.297). A sizable number of additional studies confirm their findings that blacks are disadvantaged and whites advantaged in incarceration decisions

⁷ Aryanism, a doctrine that states that Caucasian gentiles are composed of the superior Aryan race, was used by Nazis to rid the world of non-Aryan persons. People who held this doctrine put Six million Jews to death during WW II. Blacks also have suffered historically at the hands of members of the KKK who also hold to the Aryan doctrine. Not a few judges and lawyers have related to blacks victims and defendants in court as if they were inferior to white. The practices yet go on today.

(e.g., Florida: Crawford et al.; Albonetti; Steffensmeier and Demuth,). Studies on the effects of economic inequality on violent crime controlling for race show a consistent pattern of black-white differences also (Harer and Steffensmeier; Ousey, and Parker and McCall).

According to Marc Mauer (19) of The Sentencing Project, on any given day in America, nearly one in four black men between the ages of 20 and 29 is either in jail, prison, on probation or on parole. Cole (20) tells us for every black man finishing college, 100 more are arrested. The hard cold fact is that blacks in America represent nearly 50 percent of the prison population but only about 13 percent of the general population. Do blacks have a criminal proclivity that whites do not have or could it be that the officials within the justice system pursue them more vigorously than whites?

While literature is replete with evidence that injustice along racial lines is a major problem within the justice system for blacks and whites, little attention has been paid to other groups. As Sampson and Lauritsen (21:364) write: Despite the volume of previous research on race and ethnic comparisons, we know very little about criminal justice processing other than for blacks and whites. Quite simply, there is little empirical basis from which to draw firm conclusions for Hispanic Americans. This is partly true because Hispanic Americans are often referred to as either white or black in racial classifications.

One recent study by Steffensmeier and Demuth (22), however, reported on sentencing decisions involving Hispanic-black-white comparisons. Their study used data on Pennsylvania sentencing practices. Their “main finding is that Hispanic defendants are the defendant subgroup most at risk to receive the harshest penalty. This

pattern is held across all comparisons—i.e., for both the in/out and term-length decisions and for both drug and non-drug cases” (p.145).

By singling out Hispanics as a separate group to be studied along with whites and blacks in the current study, cross-comparisons can be made among the groups regarding their perceptions related to quality of justice.

Sex

Sex is defined as “one of the two divisions of human beings and animals.” It is “the simplest and most universally used of the reference points in the ascription of status”. According to Bierstedt, (23): “The separation of the sexes is both a cultural and a social phenomenon; that is...men and woman occupy different statuses... and ... norms...in all societies.” Sex is defined in the present study to mean gender with male and female comprising the two genders.

Literature verifies that justice for women, in too many instances when faced with questions of sex, is wanting. Part of the problem has to do with how laws are written in the U.S. Many laws have been written to favor men and some presuppose a husband in the life of the woman. When there is no husband, court rulings tend to be biased against women. Rosenberg (24) has written:

Discriminatory laws and cultural bias make it unlikely that courts can produce much change for women. This remains the case even when laws are rewritten to remove the discrimination.... There is a great deal of evidence that the courts, composed overwhelmingly of men, have had great difficulty taking sex

discrimination claims seriously. Bias has been such a consistent and serious problem that it deserves to be highlighted

Ronsenberg's book also reports the summary findings on gender discrimination in the courts by a task force in the State of New Jersey. He writes:

Although the law as written is for the most part gender neutral, stereotyped myths, beliefs, and biases were found to sometimes affect decision-making in the areas investigated: damages, domestic violence, juvenile justice, matrimonial and sentencing. In addition, there is strong evidence that women and men are sometimes treated differently in courtrooms, chambers and at professional gatherings...71 percent of female lawyers had observed judges treat female witnesses in sexist ways, 83 percent had observed other lawyers so treat female witnesses, and 78 percent had themselves been subject to sexist treatment by judges."

Economic Status

Economic status is another factor associated with perceptions vis-a-vis quality of justice. Economic status has to do with the amount of material wealth a person has amassed. In many cases social status combines with economic status to yield classes known as socioeconomic classes. Some scholars divide classes into three hierarchical groups: low, middle and upper. The low class includes poor people who tend not to have a formal education. The middle class includes a wide range of people who hold professional positions, usually having education beyond high school, and own property or other forms of investments. The upper class is the "class of the old money." These

people are called “the movers and shakers” of their communities.⁸ For the purposes of this work, economic status is trichotomized into low, moderate, and well-off.

Reiman’s (1984) book, *The Rich Get Richer and the Poor Get Prison 2nd Edition* deals with injustices of the criminal justice system. He cites statistics as to the unequal treatment in sentencing criminals based on their economic status. One example follows:

“Of the 7,724 inmates of federal prisons and reformatories in 1970 who had an income in 1969, 4,491 (nearly 60 percent) reported an annual income of under \$2000. Of 141,600 persons confined in local jails throughout the nation in mid 1972, 61,800 (44 percent) had a pre-arrest annual income of less than \$2,000—only 11 percent reported pre-arrest annual income of \$7,500 or more. The 1972 U. S. median income of \$9,255 was exceeded by roughly 10 percent of the inmates. Only 6 percent had pre-arrest incomes of more than \$10,000.”

Before Reiman’s work, Willard Gaylin(27) wrote *Partial Justice: A Study of Bias in Sentencing*. According to him, there were no guidelines that established how judges should deal equally in sentencing. What was considered a harsh sentence to one judge

⁸ The *World Book Dictionary* defines socioeconomic as 1) “having to do with or involving factors that are both social and economic. 2) “having to do with or involving a person’s social and financial status.” Sociologists (25) are more specific in defining socioeconomic class. “Class may also be referred to as market situation. Classes in this sense need not be communities or collectivities; they merely represent possible, albeit frequent, bases of collective action. In contrast, for Weber, status is normally a matter of actual grouping of individuals. As opposed to purely economically determined class situation, status situation is a typical component of the life fate of people that is determined by a ‘specific, positive or negative, social estimation of honour’” (p. 60).

was a lenient sentence to another. The sentences were reflective of the perceptions judges held toward criminals and crime.

Speaking about wealth and class, Reiman also revealed an economic bias in the justice system. He wrote:

This economic bias is a two-edged sword. Not only are the poor arrested and charged out of proportion to their numbers for the kinds of crimes poor people generally commit—burglary, robbery, assault, and so forth—but when we reach the kinds of crimes poor people almost never have the opportunity to commit, such as antitrust violations, industrial safety violations, embezzlement, serious tax evasion, the criminal justice system shows an increasing benign and merciful face....The more likely that a crime is the type committed by middle- and upper-class people, the less likely that it will be treated as a criminal offense. When it comes to crimes in the streets, where the perpetrator is apt to be poor, he or she is even more likely to be arrested, formally charged, and so on. When it comes to crime in the suites, where the offender is apt to be affluent, the system is most likely to deal with the crime non-criminally, that is, by civil litigation or informal settlement. Where it does choose to proceed criminally as we will see in the section on sentencing, it rarely goes beyond a slap on the wrist.

McKinnon's (28) *Miami Herald* article is important in justifying economic status (it can also be used to justify race and sex) as an intervening variable. He wrote about a black woman injured in an automobile accident whose case was judged by an all-white jury. The verdict went against the plaintiff because she was poor and black. Moreover, the judge in the case seemed to have sided with racist remarks made by members of the all-white jury. After the trial was over, one of the jury persons called the plaintiff's lawyer to explain how they reached their verdict. Here is what McKinnon had to say: "Several members of the jury said they did not want to award anything to Joann Wright because she was a fat, black woman on welfare and would blow the money on liquor, cigarettes, jai alai, bingo or the dog track."

Jurors also said they

...would be paying one way or another, by awarding money in this case or through welfare....The jury found Wright 70 percent negligent, gutting her lawsuit....The case also suggests that jury prejudice wasn't the only problem Joann Wright faced during the trial. In denying Wright's original request for a new trial based on the juror statements, Circuit Judge Robert Bonanno had seemed to defend the expression of bigotry in the jury room. 'All jurors come to jury service with certain biases and prejudices,' he explained. "What's really important", he wrote, 'is the free and open exchange of ideas and discussion in the jury room, unbridled with concerns of not speaking politically correct.

Judge Bonanno had the right to his opinion as an individual speaking to friends at a private party or even at a public forum. We, however, take issue with a court official who tolerates bigotry in the courtroom. The question might be asked, "How does an official who is sworn to uphold justice for all without regard to race, color, creed, religion, etc., allow for bigoted behavior?" Bigoted behavior, as is the case with all behavior, is learned. The socialization of people into what is good, right and proper in society sometimes leads to bigoted behavior, and its impact is felt in institutions that are thought to be free of bigotry.

Recall with me a special issue of *Time* Magazine in 1994. Was there any doubt as to its racial subtext when it noted, "randomly, irrationally, crime pounds at the door of a slumber party. It pulls up beside a tourist at a highway rest stop. It catches the 5:33" (Lacayo, 29: 51). *Time's* editorial staff might just as well have said to the American public, especially to white America, that crime is related to racial status. The "it" in the piece directly related to three crimes that were very much on the minds of people at the time of the special issues or namely: the kidnapping and killing of a white girl in California by an alleged "half-caste"; a series of attacks on Europeans by black youths involving "carjackings" in Florida; and the West Indian immigrant who went berserk on a commuter train in New York.

This is the stuff that helps shape how people view others or form perspectives that can lead to negative perceptions. If a leading magazine like *Time* felt at ease in its publication, little wonder Judge Bonanno tolerated bigotry in the courtroom or the Republican Party felt at ease in associating Willie Horton, a black criminal, with the likes of the Democratic Party in the 1988 presidential campaign.

Other Variables Impact on Perception of the Quality of Justice

A number of additional variables are important to the study. These other variables include respondents' views as to which branch of government governs America, their belief system, and the degree to which they trust Founding Fathers as moral leaders. These variables are used to show additional relationships to the dependent variable. Political status and views as to how the Constitution should be interpreted are used as "face-sheet" variables.⁹

Who Governs America

How much thought does the average citizen give to the question as to who governs America? Perhaps not very much. The Country has three distinct arms of government: Legislative, Executive and Judiciary. They are said to be equal but in practice, are they? If one of these exercises greater power than does the others, it can be called the dominant one. De Tocqueville had once said, "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." The weight of De Tocqueville's (30) should not be taken lightly. The reason being that if political questions become matters of the courts in due course of time, and both Congress and the President are preoccupied with political questions, the courts are in a unique position to determine public policy in the area of the other two branches of government. Does this not, at least, theoretically give the courts the upper hand in governing America?

Archibald Cox (31) had the following to say regarding De Tocqueville's words.

⁹ "Face-sheet" variables refer to variables where information is collected but not reported. The results may be used in subsequent studies.

The statement is equally true today. Judge-made law plays a much larger part in the government of the American people than of the British. Our judges are less attentive to the letter of the law or to precedent. They move freely in wider orbits. Both bench and bar make greater use of statistical and other social studies, and the line between law and policy is often blurred.

See the connection: the Congress makes laws, while the Executive Branch makes policy as to how laws are implemented, and the Courts determine if those laws and policies will be able to stand constitutional muster.

The distinction among the branches of government may be seen via three law students debating the matter of injustice in America. One said that he would like to be the leader of Congress so that he could promulgate laws to set things right in America. The second said that he would like to be the President in order to carry out the man's law because equal justice would no doubt require sound conservative principles to guide implementation. The third student held his peace. As he did, the other two questioned him as to what he had to say about the matter. After some time, he said that as Chief Justice of the Supreme Court, it was not lawful for him to discuss a law that would likely be found unconstitutional.

History teaches that the three branches of government operated pretty much as coequals up until the Warren Court. Rather than approaching questions of the judiciary in a negative manner, i.e., ruling on the constitutionality of works by the President, Congress and by States and States' Legislative bodies, the Warren Court offered affirmative remedies to long-standing social problems in America. This action took the

courts into uncharted waters. The courts were found having to deal with such big issues as segregation of schools, reapportionment of State Legislatures and a number of issue, which appeared to usurp the authority of State Legislative bodies.

For example, Cox reported on a medical case in the State of Alabama where a class action suit “was brought in a federal court on behalf of the guardians of all the patients confined at Bryce Hospital for the purpose of compelling reconstruction of the physical facilities and the improvement of the health services on the theory that the existing conditions violated the patients’ constitutional rights.” (96). The federal court ordered the Alabama Legislature to meet in special session and also ordered them to vote appropriations to remedy the problem. According to Cox, “an individual federal judge became, in effect, the chief executive or administrator of Bryce Hospital. He also superseded the judgment of the Alabama Legislature in appropriating funds and, indirectly, in issuing bonds or levying taxes.”

Clearly, the courts crossed over the separation of power division among the three branches of government when it ordered, school desegregation, apportionment of State Houses¹⁰ and Bryce Hospital¹¹ to correct its past wrongs. It is not the researchers’ intent to argue whether the courts were right or wrong in what they did. Certainly Archibald Cox is one who thinks they acted judicially. What is important to the present study is the

¹⁰ Even today, certain school systems in the South are stillt under desegregation orders of the courts. Moreover, the courts are currently compelling some State Legislatures to redraw legislative districts that impact minorities’ access to Congress and State Houses.

¹¹ In the researchers’ home state of Florida, the early 1990s witnessed the prison system come under court order to provide adequate beds for inmates. This decision by the court also mandated a financial remedy. Corrections institutions throughout the State were forced to release felons to comply with the court order. Today, some of those felons have been rounded up and returned to jail to serve out their sentences. Moreover, enough prison space has been built to accommodate the jail population for the near future.

fact that the courts have the ability to cross over to make void the work of Congress, the President, States and State Houses.

Congress can pass laws and the Executive Branch can make policies to implement those laws, but only the Supreme Court can declare laws to be unconstitutional; thus rendering them null and void. Do courts govern America? Some think that they do. If courts govern America, Americans should know. Certainly a case can be made to show the power of courts to order the economy, social structure and political process. No question but by interpreting the federal and state constitutions, the courts to a large degree govern the Country. This is not to say that checks and balances do not exist. Surely Congress can rewrite laws to make them agree with the findings of the courts. Yes, the President can make appointments to the federal courts, with consent by Congress, favoring a given interpretive framework; but, it is still the courts with the last word because they alone can make void a law.

Neely's (32)1982 book, *How Courts Govern America*, is interesting reading for its contribution to an understanding of how perceptions differ as to the quality of justice administered by officials in America and for his premise as to which branch of government dominates policy in America. Mr. Neely lived in the small state of West Virginia. He voiced a positive attitude toward the "higher courts" but had some strong negative words about the competency of courts at the local level which impact the average American's life.¹²

¹² Clearly, most local officials do not share Neely's perception of the lack of competency of local court officials. Those who serve on the lowest levels of courts have favorable opinions as to the quality of justice administered by them. The researchers know from personal experience that local judges feel they are very competent

Neely all but states a well-known fact that judges can be bribed. He says that judges do not act as neutral parties in disputes, albeit according to Neely, again at the local level. According to him, "judges often base their routine, day-to-day decisions on personal relationships which they enjoyed before they became judges or on political alliances which sustain their judicial careers." Strong words indeed from a judge about judges seeing how judges are thought to be above reproach. As for which branch of government governs America, Neely thinks the courts do. The current researchers seek to know perceptions of the subjects of this study regarding which branch of the government has the edge in who governs America-Congress, President or the Courts?

Trust In Founding Fathers' Morals

To trust is to hold a similar belief as another. One definition of trust in *The World Book Dictionary* (32) is as follows: "a firm belief in the honesty, truthfulness, justice, or power of a person or thing; faith." Moral is defined as "good in character or conduct; virtuous according to civilized standards of right and wrong; right; just." Moral may also be defined to mean, adhering to society's standard of what constitutes right and wrong. The latter definition is a legal definition. According to this definition, what is right today may not be right tomorrow.

The researchers, like other children, were taught that America was founded on Christian values.¹³ As children we were told to honor George Washington and other Founding Fathers of America. Many American children believed that "George

¹³ By Christian values is meant the teachings of the early Church as demonstrated by Jesus and his disciples. One might reasonably expect, therefore, that the values prescribed by Jesus and his disciples: to love all men, lie not, do justly to all men, love mercy and walk in humility, having not respect of persons, would be those of the Founding Fathers. While the words of the Founding Fathers often agreed with the Christian values, their deeds were often of inconsistent with their rhetoric.

Washington never told a lie.” Moreover, the framers of the Constitution were held to be men of the highest moral character.¹⁴ The researchers related the morals of the Founding Fathers to those espoused by the early Church as outlined in the New Testament. We learned that not everything said about the Founding Fathers was true and some things bordered on deception. Take for example, the Founding Fathers’ will regarding participation in government, were they fair to all the people who lived in America? The truth of the matter is that the Founding Fathers were not as open to broad participation in government as some believe.¹⁵ Becker, et al. (33) have written:

This was particularly true with regard to the civil rights of a number of disenfranchised groups including women, African Americans and even non-Protestants in some cases. Although the social production the Second Amendment was couched in the language of an individual rights issue to protect the public from

¹⁴ The media played a huge role in determining what Americans believed about the Founding Fathers. The media play the same role today in shaping Americans’ views. For example, take the “landslide” victory of Ronald Reagan over former President Jimmy Carter in 1980-it was not a landslide at all. The Congressional Quarterly (1991:130) reveals that in fact, only a 5 percent point margin separated the two men with Reagan receiving less than 30 percent of the eligible votes. Just as the researcher was socialized into believing “white lies” about the Founding Fathers, but later learned better, lawyers, judges and law students have also been taught those same “white lies.” The question for the present research is to what extent they trust in the moral character of the Founding Fathers. If the subjects of this research morally hold the Founding Fathers in very high esteem, then the Founding Fathers views regarding justice will be above suspect. On the other hand, if the Founding Fathers are seen for what they truly were, the elite of their day, having the same frailties and vices as other people, their influence on the subjects of the current research might well be different.

¹⁵The will of the Founding Fathers regarding participation in government is one way of gauging their moral character. The researchers have come to understand that the will of the Founding Fathers was a desire to maintain the status quo of their day. The leaders of the revolution were men who wanted to be empowered. They were the elite of the people, who met behind closed doors, afraid to have open discussions about their business because the average person possibly had other thoughts. It is clear that the Founding Fathers were not eager to empower the people. A move on this order would have taken away their privileges as the wealthy class. Moreover, revolution or at least a radical form of government, foreign to their will, could have taken hold. Consider the Founding Fathers’ will regarding women and African Americans participating in government as a case in point. Women could not vote and African Americans were not included among those who had liberty and justice. Moreover, most white men could not vote because they were not land or property owners. It was not until the 1960s that the courts recognized the basic rights of all citizens to vote in the United States.

federal government tyranny; in order to avoid revealing the real goal of maintaining white supremacy and the control of African Americans (434) (Bogus 34).

Americans worship their heroes. The hero worship syndrome of America is perhaps nowhere better pictured than in how Americans relate to George Washington, among the most honored of Americans heroes. There have, however, been many tales written about him, the results being that many Americans seem to have difficulty distinguishing between the mythical Washington and the true Washington. This being said, it must also be pointed out, Americans do not take kindly to people “trashing” their heroes. For many Americans, even holding an opinion contrary to the conventional wisdom about Washington shows a lack of patriotism.¹⁶

It is a fact, however, that after Washington died, an Episcopalian preacher, Mason Locke Weems (36), wrote a fanciful book about the life of Washington for children. He presented Washington as an honest man who was equally, pious and hard working. Weems’ Washington was the quintessential patriot endowed with much wisdom. His intent was to present Washington in the most favorable light possible. This book, having undergone many revisions, “popularized the story that Washington as a boy had refused to lie in order to avoid punishment for cutting down his father's cherry tree. Washington long served as a symbol of American identity along with the flag, the Constitution, and the Fourth of July.” Weems wrote about the mystical Washington.

The true Washington, like Jefferson and other Founding Fathers of America, owned slaves. How Washington treated his slaves, his attitude toward slavery, and the

¹⁶ Rupert Hughes (35) wrote a very critical book about George Washington.

moral example set by him are noteworthy. The researchers have isolated Washington, and a little later Jefferson, for scrutiny as representatives of the Founding Fathers who are said to have established America on Christian values. These two were chosen because they are held in such high esteem in the eyes of Americans.

Paul (37) wrote about the right relationship between slaves and their masters in the New Testament. Behavior consistent with principles outlined by Paul argue for high moral values. Contrary behavior to the loving way the early Christians approached relationships between masters and slaves argue against the view that the Founding Fathers were of the highest moral character and that they went on to found America on Christian values. The important question regarding the Founding Fathers treatment of their slaves is: Did they treat them as “fellow brothers”? In other words, did they follow the simple maxim: “Do unto others as you would they do unto you.”

Regarding Washington’s attitude about slavery and the moral character of his slaves, the researchers offer Woodward’s (38) study of Washington as one bit of evidence to show his true feelings. Woodward (1942) says:

Washington was opposed, in theory, to slavery. He thought it uneconomic. We have many expressions of his opinion to that effect, but he never took any active steps to put an end to it; and, in fact, he added largely to the number of his slaves by purchase. In the year of his marriage he bought thirteen slaves with some of the money that came to him from Mrs. Curtis, and we find him both buying and selling for several years thereafter.

Owning slaves during Washington's time was the norm not the exception. The researchers do not fault Washington for owning slaves. The researchers' job is to point out the facts. If Washington had the opportunity to set his slaves free from their bondage, but chose not to do so, did not Washington at least tacitly take the side of the slave owners? Did not Washington aid and abet the institution of slavery by "buying and selling (slaves) for several years? Reasonable doubt exists as to whether he acted out of a right spirit toward the slaves.

Specific to how Washington treated his slaves and Washington's attitude toward the moral character of them, it can be said, that there is no evidence which shows Washington to have been a harsh owner. Woodward, in quoting Haworth, says, however, "that if Washington took any special pains to develop the mental and moral nature of 'My People' as he usually called his slaves, I have found no record of it. Nor is there any evidence that their sexual relations were other than promiscuous—if they so desired. Marriage had no legal basis among slaves and children took the status of their mother."

If the slaves were Washington's "people", as he was apt to call them, should it not be expected that he would have demonstrated the moral character of Christians by showing concern for the "lost souls"? Seeing the slaves in fornication, was it not Washington's Christian duty to instruct them "in the holy ways of the Lord." Woodward points out that many of Washington's fellow planters insisted that their slaves attend church and that they should refrain from sex outside the bond of marriage¹⁷. Should the hero among heroes have done less than other planters?

¹⁷ It is also true that slave masters raped black female slaves. Becker et al. (33:436) have written: "This event was used as a weapon of domination, repression and demoralization of the black people."

Another founding father, Thomas Jefferson, also owned slaves as did Washington. Some historians tell us that Jefferson was adamantly against slavery, but if this was true, why did he own them in the first place? We know that Jefferson was not keen on giving up his slaves. Yes, it is true that he voiced great swelling words regarding the wrongs of slavery; but, giving up his slaves was conditional; he would free his slaves if the other planters did so. Miller and Smith (39) have written:

As a Virginia slaveholder, Jefferson's life and livelihood were enmeshed in the institution (slavery). He toyed with the idea of freeing his more than one hundred slaves and making them tenant farmers, but he always found his financial debts a higher obligation. During the presidential campaign of 1800, a notorious scandalmonger accused Jefferson of fathering mulatto bastards by his own slave, Sally Hemmings. Such paternity has been neither proved nor disproved.

Jefferson lived to be an old man, and there is no evidence of him freeing his slaves while he lived. It is true that Jefferson treated them with greater kindness than did some other owners, and it is reported by Bowers (45: 174) that "He was loved by his slaves." One wonders though if it was true love or accommodation by the slaves to an unjust system given that Jefferson, like most whites of his day, thought blacks to be inferior to whites.

Compare Hines' (41) assessment of Jefferson with the one just mentioned above: Hines wrote.

“Consider the Sally Hemmings story, the power of it, its persistence. The evidence is circumstantial; we will never establish a truth all will accept.... There are those people, custodians of the Jefferson legacy, who have a clear stake in protecting not only his historical reputation but his progeny from the taint of race mixture. Similarly, there are those—I venture to say most black people—who know the rumors are essentially true despite gaps and problems with the evidence. Why is it so important? Sally Hemmings was certainly not the first or the only black woman so used. Why the fuss? It is not Sally Hemmings, but Thomas Jefferson who makes the difference. He was a Founding Father of the nation, and, the rumor had it he sired children by a slave woman.

Yet to be explained is Jefferson’s attitude toward sex outside the bonds of matrimony. Jefferson is said to have fathered children by one of his slaves. If he was of outstanding character and believed in Christian values, why didn’t he free Sally Hemmings and marry her to put the rumor to rest? The evidence contrary to the conventional wisdom as to the high moral character of the Founding Fathers must not be lightly dismissed. Consider the claim that both Washington and Jefferson fathered children by slaves mentioned below from an online article by Eastman (42).¹⁸

¹⁸ *Nature Magazine* published an article in 1998 revealing the likelihood that Jefferson fathered one of Hemmings’ children. Others disagree with the finds believing Jefferson’s young brother was the father. See <http://www.vibe.com/new/vibewire/20010416/news05.html>.

Historians and genealogists have long maintained that George Washington had no children. However, the descendants of West Ford maintain otherwise. West Ford was born in 1784 or 1785 on the Bushfield Plantation in Westmoreland County, Virginia, to Venus, a mulatto slave woman owned by George Washington's brother, John Augustine Washington and his wife, Hannah. According to Ford family oral history, Venus told her mistress Hannah that George Washington was her child's father. Historians dispute this claim, suggesting that one of Washington's nephews may have fathered the boy West.

A similar scenario existed with Sally Hemmings, a slave owned by Thomas Jefferson. Her descendants also claimed that Jefferson fathered one or more of Hemmings' children. Recent DNA analysis compared the Y-chromosome DNA from the living male-line descendants of Jefferson and Hemmings. In November 1998, the British science journal *Nature* published the results of Dr. Eugene Foster's DNA Study. The Thomas Jefferson Memorial Foundation then issued a report in January 2000 concluding that Thomas Jefferson was the father of at least one and perhaps all the children of Sally Hemmings. Now the descendants of West Ford are attempting to conduct a similar DNA analysis to prove or disprove the two-hundred-year-old family tradition.

The researchers' interest in this topic has to do with the subjects of this study trust in the morals of the Founding Fathers and how that trust impacts their perception of quality of justice. Trust in Founding Fathers' morals is trichotomized: much, moderate, little.

Belief System

All people have a belief system. A system is “an ordered group of facts and principles, while a belief is “what is held to be true or real” (World Book Dictionary, 32: 185). What a person holds to be true or real is not necessarily true or real. When a person defines a situation as being true whether it is objectively true or not, it is true to the one who so defines it. Justice is not an exception. Many people hold an ideal concept of justice in America. They appear to be less interested in how the justice system truly operates than in maintaining its “good” image. We call this the mythical system of justice. The true system of justice is known by its deeds. This we call the operational system of justice. The mythical system touts the justice system as fair where liberty, freedom, and justice for all are its guiding principles. The operational system, however, is sometimes closed, oppressive and lacking in justice to many; it is how the system actually functions.¹⁹

¹⁹ American government and business officials routinely take bribes, favor friends in employment while giving lip service to merit hiring, making themselves rich at the expense of others (Enron is an example. Before its fall, executives who are now accused of moral and criminal behavior were shining examples of successful businesspersons), satisfying their ego needs, crushing their enemies while at the same time calling for high moral standards. The ones who govern come from the same mode as the ones who tolerate their practices. Big money rules elections to office from local elections to state and federal elections. Poor people are often denied justice because they lack money to hire top-notch lawyers as do rich people. In this sense, justice is a function of how much money one has. Even when Congress has sought to change the system where money would be less a factor in who is elected, the courts have tied Congress' hand and that of local legislatures to interfere with the political privileges of the wealthy. Philip M. Stern (43) was not joking when he wrote *Still The Best Congress Money Can Buy*.

As stated above, everyone has a belief system. What people believe is a function of what they are taught to believe. Three people were asked whether the American justice system is racist. The first, an old black man from Cuba, said that if it is, he has not experience it. The second was a young white girl from rural Georgia. She said that America is the fairest country in the world that everyone is treated equally. The final person is by a white man, William M. Kunstler, who has much to say. Kunstler (1994) has written:

For more than twenty years my representation of black defendants has been motivated by one of my strongest beliefs: that our society is always racist. No matter what laws are passed or what promises are made, in the halls of justice, the only justice is in the halls, as Lenny Bruce once observed. None of our institutions, including our legal system, deliver on this country's fundamental promise that we are all created equal, especially those of us not born with white skins.

Black people rarely get justice in our courts; so, for me, cases in which defendants are black are political.

Each of the three persons mentioned above experienced the criminal justice system. The old black man from Cuba had to go to court because his property was being taken from him by eminent domain. The city where he lived was building a new arena in his neighborhood, and he was one of the people who held out, not desiring to move from the neighborhood he had lived since coming to the United States from Cuba. He also had a problem with the price the city was offering him. He had his day in court. The city prevailed in taking his property, but he was handsomely compensated. This left him feeling that justice had been served.

The young white girl from rural Georgia had grown up to believe the police were her friends. She was a big fan of the local sheriff in her county. One day she was caught with some cocaine in her possession. The policeman took her to jail and booked her. Later that evening, she was back on the streets. The word on the street was that the sheriff “fixed her case.”

William Kunstler is a well-known trial lawyer who attended not one but two Ivy League schools. He grew up with a desire to serve his country in the field of law. His view of the legal system in America changed from what he initially felt to be a just system to one where he now believes justice is hard to be found. His view of America is one of hope. Kunstler has written:

My view of America is defined by the original, idealistic principles set forth in the Constitution, that all people are equal and that government has a responsibility to protect our rights and freedoms described in the Bill of Rights.... I have worked steadily to push society in this direction, toward what I view as morally correct rather than socially acceptable (xiii).

How could your average Ivy League-trained lawyer turn from a defender of the system to a radical seeking to change the system which he calls racist and unjust? The turning point came with Kunstler in the early 1960s when he witnessed the treatment of Freedom Riders from the North who had ventured into the South to aid blacks in their struggle to integrate bus terminals. According to Kunstler, the turning point came in 1961 when he agreed to defend several hundred Freedom Riders in Jackson, Mississippi. In his own words, he said, “I saw for the first time the depths to which government would

go to protect the rights of the privileged few.” The current research dichotomizes belief system: mythical and operational.

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Chapter 4

Hypotheses and Justification

The aforementioned praxis theory goes a long way toward the theoretical justification of the hypotheses presented in this study. The current research deals with the relationship between permissiveness in interpreting the law and perception of quality of justice. The focus is on how lawyers, judges and law students view justice. Their views of justice go a long way in determining how they relate to the public who seeks justice. Sometimes views of justice are not the same as justice itself. This is a perennial truth. Praxis points out this divide and serves as a mediator to bring the theory of justice in line with the practice of justice. The praxis theory is a barometer for measuring the degree to which the theory of justice lines up with the practice. For example, the Founding Fathers of the United States spoke about “liberty and justice for all.” They declared, “We hold these truths to be self-evident, that all men are created equal.” At the very time these words were written, slaves were treated as anything but an equal to the ones who wrote them.

The theory of the Founding Fathers was not in keeping with the ongoing practice of justice. Today, lawyers, judges and law students are known to hold fixed positions about matters of the law. Just as religious people hold strong feelings about what they believe and whites and blacks hold strong feelings regarding the O. J. Simpson case, the subjects of this study also have strong feelings regarding the law. Some believe that the law must be interpreted literally, while others, with equally strong feelings, believe it should be interpreted with an eye toward social activism. Yet a third group has carved

out a position between the two extremes. These three views can be tied to the last three justices of the Supreme Court.

The Warren Court, for example, was characterized as a liberal court,²⁰ while the Burger Court maybe styled as a centrist court,²¹ and the Rehnquist Court is said to be conservative.²² These three courts represent different views as to how the law should be interpreted. The Warren Court opened up society to greater participation of minorities in public education and in rights afforded criminal suspects. Discrimination based on race was outlawed. The Burger Court approached the law with a view toward the people. It sought to bring the law to the level of the people. In doing so, it took some positions on issues of law that fit the liberal viewpoint and others favoring a conservative point of view. It did not try to undo the gains minorities had won under the Warren Court nor did it push vigorously for radical changes, as did the Warren Court. The Rehnquist led court is bent on individual rights. Minority group gains have been dealt a blow. In the area of affirmative action, the Rehnquist-led court has routinely ruled in favor of plaintiffs when discrimination against the plaintiff was the issue.

²⁰ Earl Warren has won recognition as a liberal and influential presiding officer. In 1954, he wrote the opinion for the unanimous ruling by the Supreme Court outlawing racial segregation in the public schools. He wrote the 1964 decision that states must apportion both houses of their legislatures on the basis of equal population.

²¹ The Supreme Court knew Warren E. Burger as a conservative before his appointment. "Many people therefore viewed his appointment as an attempt by Nixon to reverse the liberal direction that the court had taken under Warren, especially in the area of criminal justice. As chief justice, Burger voted for many decisions that stressed the rights of society over the rights of individuals. But in a number of cases involving civil rights, Burger supported a more liberal viewpoint. In 1971, for example, he wrote a unanimous decision allowing school busing to end "all vestiges of state-imposed segregation."

²² The Rehnquist Court is the most conservative of the three. Under Rehnquist's leadership, the court has reversed some rulings of the previous courts. An example can be found in the area of affirmative action. The Rehnquist-led court has tended toward individual rights. Minorities fault the Rehnquist-led court for undoing what they feel to be hard-fought civil rights gained under the previous courts. "The Court upheld state restrictions on the use of public employees and facilities to perform abortions, made it harder for women and racial minorities to challenge discriminatory employment policies, and allowed executions in cases where a murderer was mentally retarded or as young as 16 when the crime took place."

The idea of equality, and liberty embedded in the law is the theory; the true meaning worked out in the justice system is the practice. Some of the subjects of the present study hold a literal interpretation of the law. They apply the law as it is written supporting the law to be good for the current age, notwithstanding some people are denied justice in the process. Others see the lawgiver's intent or the spirit of the law. They seek to interpret the law to understand what was said in the past in order to make possible justice for all today because they are aware of the injustice found in the justice system. When the intent of the lawgiver is known to have been good, right and proper, those who seek the intent act out their praxis.

It is most important to focus on perception rather than quality of justice itself because perceptions tell much about the persons who hold them. When perceptions are inconsistent with the facts, the facts may be used to change perceptions. Here praxis serves the role of mediator between lofty theory of justice and the mundane facts. The quality of justice is directly related to an open view of the law. The following conjectures are offered to assert those relationships expected in the study.

Major Hypotheses and Justifications

1. It is expected that in those cases where the subjects' interpretation of the law is liberal, their perception of quality of justice will be unfair.

The rationale is that because the subjects have an open mind as to how they view the law, they are not likely to form opinions which color their view of justice to the extent that they cannot or will not hear a different drummer. Liberal people are known for an attitude which allows for more than one point of view. They often see themselves as emancipated from tradition, convention or dogma. As such, they are generally open to

change. When the facts of justice are demonstrated to be inconsistent with their perception of justice, these are likely to fight change least of all.

2. It is expected that in those cases where the subjects' interpretation of the law is centrist, their perception of quality of justice will be somewhat fair.

A person who takes a centrist's position is one who seeks to be "safe" in his/her dealings. He/she is not likely to rock the boat. He/she is the type who adds up the sum and splits the difference down the middle. The centrist is one who holds moderate views. They can be counted on to pull some positions from the right and some from the left. They are neither radical nor ultraconservative. As such, they are open to change but not as much as those who hold liberal views. When their perception of justice is shown to be inconsistent with the facts, they will weigh the position they should take. In the end, they will decide on a safe course somewhere in the middle of the two extremes.

3. It is expected that in those cases where the subjects' interpretation of the law is conservative, their perception of quality of justice will be fair.

Conservatives are the least likely to deviate from the norms of society. They are the backbone of the status quo. Some call them diehards of society who desire to maintain the existing order and who resist and suspect proposal for change no matter how benign. By their faithful adherence to the rules that govern society, they march onward ever proclaiming the virtues of their way of life. These are likely to hold fixed opinions regarding quality of justice based on perceptions that, while not impossible to change, are not likely to change.

Sub-Hypotheses System

1. Race

Literature is replete with studies of quality of justice using race as a key variable. For example, in a study dealing with the death penalty, Kairys (4) has written:

“Baldus concluded that the most significant factor is the race of the victim. The death penalty was 4.3 times more likely when the victim was white rather than African-American. The death penalty was somewhat more likely still when the murderer was African-American. The bottom line was, with all other circumstances the same (premeditation, viciousness of the crime, etc.), an African-American like McCleskey, convicted of killing a white person, was four to five times more likely to receive the death penalty than a white person convicted of killing an African-American. Stated another way, if McCleskey had killed an African-American rather than a white, he would most likely not have received the death penalty. In *McCleskey v. Kemp* (1987), the court rejected McCleskey’s appeal: he had not proved purposeful discrimination” (136-7).

In a comparative study on racial representation on jury venire lists, using all three racial groups included in the present study, Alker et al. (5) did a comparative study of racial representation between the normative census based data and 1970 jury venire lists. Racial bias was found in favor of whites in that they were slightly overrepresented while African Americans and Hispanics were underrepresented.

The record of racial bias in the United States criminal justice system goes back to its very beginning. Blacks and brown-skinned people as well as people of other colors were treated unequal (14). In 1896 (Plessy v. Ferguson), the Supreme Court upheld a separate but equal law which all but made blacks second-class citizens. In light of the history of racial relations in the United States and using the above studies as a point of departure, the researchers set forth the following sub-hypotheses with justifications:

- a. It is expected that in those cases where the subjects' race is Anglo and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
- b. It is expected that in those cases where the subjects' race is Anglo and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
- c. It is expected that in those cases where the subjects' race is Anglo and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.
- d. It is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
- e. It is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.

- f. It is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is liberal, perception of quality of justice will be seen as somewhat fair.
- g. It is expected that in those cases where the subjects' race is African American and their interpretation of the law is conservative, perception of quality of justice will be seen as somewhat fair.
- h. It is expected that in those cases where the subjects' race is African American and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
- i. It is expected that in those cases where the subjects' race is African American and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.

The rationale for the above sub-hypotheses is that lawyers, judges and law students who are Anglos and who approach the law in a conservative manner fit the mode of those who hold fixed positions as to the rightness of the law. Their views, based on experiences where the law has been basically fair unto them, project the law as fair to others. Many Hispanics came to America to escape economic conditions and tyranny in their homeland. To them, the United States is the land of opportunity where law rules and each person is treated justly under the law. They are likely to view the law as being fair compared to the oppressive society they came from no matter how they interpret the law. African Americans, on the other hand, have experienced a history of injustice in America. Of the three racial groups, African Americans are most likely to view the law as being unfair.

2. Sex

Historically courts in the United States have shown a pattern of bias against women. Many of the laws on the books were written as if women would grow up to marry and be provided for by loving husbands. The facts have not borne out the presumption. Discriminatory laws and cultural bias yet make it less likely for women to receive justice than white men. Rosenberg (6) reports on this very point:

Discriminatory laws and cultural bias make it unlikely that courts can produce much change for women. This remains the case even when laws are rewritten to remove the discrimination.... There is a great deal of evidence that the courts, composed overwhelmingly of men, have had great difficulty taking sex discrimination claims seriously. Bias has been such a consistent and serious problem that it deserves to be highlighted.

Rosenberg also reports the summary findings on gender discrimination in the courts by a task force in the State of New Jersey.

Although the law as written is for the most part gender neutral, stereotyped myths, beliefs, and biases were found to sometimes affect decision-making in the areas investigated: damages, domestic violence, juvenile justice, matrimonial and sentencing. In addition, there is strong evidence that women and men are sometimes treated differently in courtrooms, chambers and at professional gatherings.

He went on to report the following: “71 percent of female lawyers had observed judges treat female witnesses in sexist ways, 83 percent had observed other lawyers so treat female witnesses, and 78 percent had themselves been subject to sexist treatment by judges.” Base on the above studies and the researchers’ own experience, the following sub-hypotheses are offered.

- a. It is expected that in those cases where the subjects are males and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
- b. It is expected that in those cases where the subjects are males and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
- c. It is expected that in those cases where the subjects are males and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.
- d. It is expected that in those cases where the subjects are females and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
- e. It is expected that in those cases where the subjects are females and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
- f. It is expected that in those cases where the subjects are females and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.

The rationale for the above sub-hypotheses is that males still have a strong impact on how their wives and children see things. They are seen as leaders of the family and the way they view justice is the same way most wives and children view justice. While there is a growing group of liberated women and children, the number has not reached the level to offset the impact men have on their views.

Economic Status

Economic status is associated with quality of justice in that people who are able to pay for competent legal service can beat raps for which poor people spend time in jail as they do not have the money to hire a skilled lawyer to handle their cases. Much has been written about this economic bias. As indicated in Chapter 4, Reiman's (1984) work looks at the economic bias but does not stop there; he goes on to talk about crimes the poor do not even have an opportunity to commit. It is here where the criminal justice system clearly favors those with money. Reiman writes:

This economic bias is a two-edged sword. Not only are the poor arrested and charged out of proportion to their numbers for the kinds of crimes poor people generally commit—burglary, robbery, assault, and so forth—but when we reach the kinds of crimes poor people almost never have the opportunity to commit, such as antitrust violations, industrial safety violations, embezzlement, serious tax evasion, the criminal justice system shows an increasing benign and merciful face.... The more likely that a crime is the type committed by middle- and upper-class people, the less likely that it will be treated a criminal offense. When it comes to crimes in the streets, where the perpetrator is apt to be poor, he or she is even more likely to be arrested, formally charge, and so on. When it comes to crime in the suites, where the offender is apt to be affluent, the system is most likely to deal with the crime noncriminally, that is, by civil litigation or informal settlement. Where it does choose to proceed criminally as we will see in the section on sentencing, it rarely goes beyond a slap on the wrist.

Consistent with the foregoing the following sub- hypotheses are offered:

- a. It is expected that in those cases where the subjects are of modest means and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
- b. It is expected that in those cases where the subjects are of modest means and their interpretation of the law is centrist, perception of quality of justice will be seen as unfair.
- c. It is expected that in those cases where the subjects are of modest means and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.
- d. It is expected that in those cases where the subjects are of middle-level income and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
- e. It is expected that in those cases where the subjects are of middle-level income and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
- f. It is expected that in those cases where the subjects are of middle-level income and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.
- g. It is expected that in those cases where the subjects are well-off and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.

- h. It is expected that in those cases where the subjects are well-off and their interpretation of the law is centrist, perception of quality of justice will be seen as fair.
- i. It is expected that in those cases where the subjects are well off and their interpretation of the law is liberal, perception of quality of justice will be seen as somewhat fair.

The rationale for the hypotheses is that money makes a difference as to how people view things. Someone has said, "Money answers all things." When people do not have much money, they also do not have as much vested interest in the system as those with much money. As such we can expect those with little money to be more opened to see injustices in the criminal justice system when they occur. Those with money are likely to hold a skewed notion about justice because, in many ways, laws have been made to assure the maintenance of their way of life.

Additional Variables

The researchers deemed it desirable and important to ascertain the subjects' beliefs regarding a number of other variables that came to mind during the course of the literature review. One of these variables deals with who governs America.

Who Governs America

The United States has a democratic form of government with three branches: Legislative, Executive, and Judicial. These three are said to be of equal power, and they serve the role of checks and balances such that no single arm becomes dominant. In the chapter dealing with the theoretical justification of the problem, we have seen how the theory (what should be) is not always the same as what is (practice).

A 1996 *Miami Herald* article (9) carried the results of an opinion survey of 1,002 registered voters on how voters view the presidency. The poll asked, among other things, the voters to compare the influence of the President, Congress and the courts. When the President was pitted against Congress, 42% of those polled thought the President had greater influence with 51% favoring Congress. The numbers for the President and the courts are as follows: the President 38% and the courts 54%. Granted the survey was small and only tapped the opinions of registered voters. Nevertheless, those who expressed an opinion saw the courts as being more influential. This finding is in harmony with the thinking of the researchers.

By interpreting the federal and state constitutions, the courts govern to a large degree the United States. The researchers are calling attention to the divide between theory and practice once more. The democratic form of government has certain checks

and balances. Congress can rewrite laws to make them agree with the findings of the courts. The President may make appointments to the federal courts, with consent of Congress, favoring his view as to how the Constitution should be interpreted. But in the end, it is still the courts with the last word because they alone can make a law void. The following hypotheses are offered.

- a. It is expected that in those cases where the subjects' perception as to who governs America is the Congress, their perception of quality of justice will be fair.
- b. It is expected that in those cases where the subjects' perception as to who governs America is the President, their perception of quality of justice will be fair.
- c. It is expected that in those cases where the subjects' perception as to who governs America is the courts, their perception of quality of justice will be unfair.

The rationale for the hypotheses is that lawyers, judges and law students who understand the role courts play in governing America are likely those with open minds. These would be the ones expected to see injustices within the criminal justice system.

Trust in Founding Fathers Morals

There is little debate about the place in history of men like George Washington, Alexander Hamilton, and Thomas Jefferson, to name a few of the Founding Fathers of America. They have been memorialized in the minds and hearts of the average American as men of outstanding moral character. Who among us as children cannot remember the story of George Washington chopping down the cherry tree and how he never told a lie? Americans, like other nations, hold their heroes in great esteem. In reality, some of the idealized heroes' deeds have warranted the label "outstanding characters."

In the present discussion of trust in the Founding Fathers' morals, the researchers have chosen two of the Founding Fathers, Washington and Jefferson, to show that they were not much different than other men and women of their day. Washington's treatment of blacks during the Revolutionary War and Jefferson's positive words about ending slavery before the War are covered.

Lawrence C. Howard (10) has written:

In the Revolutionary War itself, the country's first major undertaking, important administrative precedents were set. When George Washington took command, for example, he forbade slaves to bear arms and stopped enlistment of black freemen as soldiers. Was not this one of the earliest examples of administrative policy-making recorded? The Continental Congress was still debating this issue when Washington acted. Blacks in Virginia were almost as numerous as whites, and Washington perceived them to pose a threat to planters almost as great as they posed by the Red Coats. Perhaps Washington knew that blacks too chose to fight for their freedom and so he announced the restrictive regulatory policy. Further substantiation of this administrative policy-making comes out in the about-face Washington took when Lord Dunsmore, the British Governor of Virginia, issued a counter enabling policy which offered slaves their freedom in return for service to the Loyalists.

Writing about another Founding Father of this country, Howard said:

In 1772 Jefferson was writing that the Colonies desire to end the importation of slaves, and the Continental Congress passed legislation to that effect in 1774. But even more to the point of black involvement in government is the original draft of the Declaration of Independence, which contained a specific charge that King George had perpetuated slavery against the will of the Colonies. The clause was stricken in deference to the wishes of southern colonies, but it must be noted—as Becker (1942) has reminded us—that Jefferson envisioned this clause as the high point of the Declaration (99-100).

Washington had the opportunity to act on the number one issue of his day, namely slavery. History tells us that he failed in this moral issue in that he chose not to treat blacks as equals to whites. Could slavery have ended during the Revolutionary War? Certainly Jefferson said that the Congress desired to end the importation of slaves. If the Congress desired to end the importation of slaves, and if the Continental Congress passed legislation to that effect, why did Washington take negative actions against blacks serving in the armed service? Would not the high ground on this issue have been for Washington to have honored the freed blacks by allowing them to fight for freedom for the country as a symbolic statement that slaves should also be freed at the same time or at the very least wait to see what Congress had to say?

Could it have been that Washington's thoughts of blacks serving in the armed forces were colored by the facts that he too owned slaves? What about Jefferson's smooth words regarding the Declaration of Independence? How much stock can be put in his great swelling words about freedom when he too owned slaves? Praxis is action. In this sense, Washington and Jefferson demonstrated their true feelings regarding blacks by their deeds.²³

What Americans believed to have been historic facts were versions of history which seemed to have been aimed more at making political statements about whites' superior status over blacks than recording what actually happened. Students internalized the political statements as truth. Even black students attending major white institutions of

²³See the contradiction with the Microsoft Encarta piece. Eminent statesmen from the earliest period of the national existence, such as George Washington, Benjamin Franklin, Thomas Jefferson, James Madison, John Jay, and Alexander Hamilton, regarded slavery as evil and inconsistent with the principles of the Declaration of Independence.

"Slavery," Microsoft (R) Encarta. Copyright (c) 1994 Microsoft Corporation. Copyright (c) 1994 Funk & Wagnall's Corporation.

higher learning were ignorant of black contributions to the growth and development of America. Simply put, students were graduated from major universities in America ignorant of others' perspectives.

As a doctoral student in the late early 1970s one of the coauthors of this work was privileged to take Professor Lawrence C. Howard's class in public administration. The researcher recalled the joy and fervent spirit with which Howard went about teaching the history of public administration. He was proud of E. B White's classic book, *The Study of Administration*. One day while discussing this classic book, the researcher who is African American (so is Howard), spoke these words: "Larry, I don't share your enthusiasm of E. B. White's book. What role did blacks play in the development and grow of public administration? This book is written as if blacks didn't exist." Howard paused for a moment and continued to teach. Later he would explain the profound impact the words had upon his own thinking. The two began to examine the literature of public administration to see how blacks had faired. It did not take long to learn that other classic books either did not mention blacks (though some of the writers claimed blacks as friends, they did not so much as reference their works), or if they were mentioned, it was a statement in passing, not a positive statement about the black perspective.

What we found in public administration, others were discovering in history. The fact of the matter boiled down to "nothing worth mentioning" insofar as blacks were concerned in every major field of study in academia (see Ladner 13). It was not that black scholars were not published; to the contrary, in too many instances their works

were relegated to the “black press.” What black scholars had to say was “nothing worth mentioning” insofar as white publishers were concerned.”²⁴

In light of the information presented above, the researchers offer the following hypotheses:

- a. It is expected that in those cases where trust in the Founding Fathers’ morals is much, the perception of quality of justice will be fair.
- b. It is expected that in those cases where trust in the Founding Fathers’ morals is moderate, the perception of quality of justice will be somewhat fair.
- c. It is expected that in those cases where trust in the Founding fathers’ morals is little, the perception of quality of justice will be unfair.

The rationale for the hypotheses is that many lawyers, judges and law students today hold views based on the sanitized version of history about the Founding Fathers. These are likely to follow the same conservative pattern set forth in the major relationships between the independent and dependent variables. Those holding a more realistic view will show less agreement with the justice system as being fair.

Belief System

In Chapter 3, three examples were used to reveal how people form opinions about justice. They were an old black man from Cuba, a young white girl from rural Georgia,

²⁴ For example, Howard has written. “Black historians have addressed this changing status of blacks in American life. The first generation black historians, founders of the Negro History Movement like George Washington Williams and Carter G. Woodson, strove to record what blacks had accomplished in this country. Once a consciousness about what had been accomplished was raised, a second generation of historians like John Hope Franklin and Benjamin Quarles placed the history of blacks into a larger Afro-American contest.”

and a well-known defense attorney. The old man thought the justice system worked because he gained financially from it. The young girl thought the justice system worked because the charges against her for cocaine possession were dropped. Finally, the lawyer thought the justice system did not work because of racism. The three of them reached their opinion based on personal experience with the justice system. According to the literature cited to justify the variables used in this study, the two who thought the system was fair held a mythical belief, and the one who thought it to be unfair, an operational belief. Justice for the three was not defined by an objective measure, but, rather, by how they or their clients fared when coming face to face with the justice system.

A person who grew up holding a mythical belief of the criminal justice system could change based on direct contact with oppressive officials. The converse is also possible. A highly charged issue of the 1990s may be used to show how this could happen in a negative way. The issue is abortion. Here we have two clearly defined groups representing beliefs either for or against abortion. Each group believes the other to be narrow in its thinking and both claim to be right in their positions. Mensch and Freeman (15) have written: “Those who are ‘pro-life,’ who probably number no more than one-fourth of the population, regard their opponents as actual or potential murderers; those who are ‘pro-choice,’ who also probably number no more than one-fourth of the population, regard their opponents as violating the fundamental human rights of women.”

One group has been brought up to believe it is the woman’s right to do with her body as she sees fit. The other thinks the focus must be on the unborn child. Who is

right? Courts have tried to deal with this issue and have not come to an agreement that anti-abortion and pro-abortion groups can live with.²⁵

If the Supreme Court should render a clear decision favoring one or the other side in this highly charged issue, the side which loses can be predicted to look at the court as being unfair. If such a group faces defeat in the court on related issues, over time they are likely to form an opinion that justice is lacking in America.

In light of the above, the following hypotheses are offered with rationale.

- a. It is expected that in those cases where the subjects' belief system is mythical, their perception of quality of justice will be fair.
- b. It is expected that in those cases where the subjects' belief system is operational, their perception of quality of justice will be unfair.

The rationale for the hypotheses is that people who have been taught that the criminal justice system is fair, and do not have personal experience with the justice system to the contrary can be expected to perceive justice as being fair, while those who have had contact with the justice system and have experienced its dark side, will perceive justice as being unfair.

²⁵ Casey v. Planned Parenthood of Southeastern Pennsylvania was denounced by both sides on television. 112 S. Ct. 2791 (U.S. Sup. Ct., June 29, 1992)

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Chapter 5

Methodology

Introduction

In developing a research design, the researcher consciously strives for the optimum combination of methods, which will assist him/her in the collection, classification, and interpretation of data. The design is the researcher's plan for assembling and organizing certain specific rules and procedures related to his/her work. The rules and procedures are viewed as guide posts for the testing of hypotheses in the empirical world.

Hypotheses are deduced from a general question, known as the statement of the problem, and a series of specific questions concerning the relationships among a set of variables. A sound theoretical framework must buttress the research questions and hypotheses that follow, and the overall package is considered to a conceptual scheme.

The conceptual scheme and the research design are viewed as having a reciprocal relationship. Each half must be given equal weight, and each must be tied into the other in such a way that the destiny of one is inextricably connected with the destiny of the other.

This leads to the method to be used in implementing the study. The decisions to be made at this level include how the researcher will collect certain facts, known as data, how the facts will be classified and how he/she will uncover the order or pattern in which they occur.

There are four criteria that have guided the researchers in choosing the research design in the current study: validity, reliability, accuracy and practicability. Because

research designs are not fixed designs, it is necessary for each researcher to mold the design to meet the specific needs of his/her study by adhering to the aforementioned criteria.

Matilda Riley (1) lists eleven decision arenas in her paradigm, and she also lists the possible alternatives to each of the decisions. The research design used in the current study is a modified Riley design.

Research Design

1. Nature of the Research Case

In this phase of the design, the researcher decides upon the kind of cases or subjects that will participate in his study. The choice is made from five alternatives: the individual-in-a-role, the dyad or pair of interrelated group members, subgroup, total group or society, and some combination of these. The choice of subjects in the present study was not arrived at in an arbitrary fashion. To the contrary, the nature of the research case dictated the empirical cases to fit the social system as defined in our conceptual scheme and to fit the level of that system on which our objective focuses.

The individual-in-a-role could be fathers, mothers or children in a given situation as long as the emphasis is placed on the individual who acts out a certain role. The dyad or pair of interrelated group members is the “smallest relational unit” in any social system, which involves the interaction between two members of a given social system. It could be the interaction between parent and child, husband and wife, or girl and boy.

Subgroups are “subsystems within larger systems” just as the faculty of a large university is a subsystem of the whole university. The total group or society means the whole of a given system. For instance, the society of a criminal justice system involves all judges, lawyers, policemen, probation officers, and others. All of these individuals are parts, which make up the whole—the criminal justice system. A combination of some of these cases in the nature of the case is self-explanatory.

For the current study, it was obvious that the best choice of subjects was the individual-in-a-role. The choice was automatically arrived at through the conceptual scheme. The focus of the study is perception of quality of justice by officials of the court as the lawyers’, judges’, and law students’ permissiveness in interpreting the law affects it.

2. Sociotemporal Context

The cases proposed for study may be approached from two different sociotemporal contexts. The first of these necessitates selecting cases from a single society at a single period in time. Though this is often the most convenient and efficient approach, due to the feasibility of the research operations, the generality of results is limited. The second approach, selecting cases from many societies and/or many periods of time, allows for broader generalization among/between cultures and time periods.

The present study is primarily interested in the perception of quality of justice in twentieth-century America as it moves to the twenty-first century. Thus, the sample was limited to a single society, the United States. For the sake of simplicity, and because

there appears to be no special need for a historical study at this time, the present study was further limited to case from a single society at a single period beginning in 1996. In order to include a varied number of cases, the population designated for the study were: lawyers, judges and law students, from several major cities.

3. Number of Cases/The Primary basis for Selecting Cases

The number of cases is the third decision arena and within it there are three possibilities: a single case, a few selected cases, and many selected cases. A single case (case study) would be used when the researcher is studying just one society, group, or person. The next alternative, a few selected cases, allows the researcher to do a very intensive and possibly thorough study, but the reliability is reduced due to the small sample size.

The last alternative (many selected cases) is perhaps the most difficult to operationalize. Yet, it is often used. Here the researchers study many societies, groups, or persons and try to discern similarities and/or differences. In studying a large number of cases, the researchers increase their chances of representing the total universe. Clearly, the choice in the present study is many cases.

The primary basis for selecting the sample in the present study was analytical. The study was analytical because theoretically deduced relationships were being tested. The population consisted of lawyers, judges and law students in Miami, Florida; Washington, D. C.; Macon, Georgia; Gainesville, Florida, and a number of other cities. The universe was comprised of all lawyers, judges and law students in these cities. The

subjects were chosen on the basis of contacts made in the different cities with one or more of the subject group willing to participate in the study.

4. The Time Factor as a Variable in the Study

The two alternatives available to the researcher are a static study, covering a single period in time, and a dynamic study, covering process or change over time. The conceptual model always involves time but with varying degrees of emphasis; some models are relatively static

A static study was the alternative selected for the present design. The researcher attempted to determine if permissiveness in interpreting the law is related to perception of quality of justice by court officials. Therefore, the study was made at a single point in time in order to define the perceived quality of justice at a given time. This approach provides a base for which a future study of the continued perception of quality of justice over time can be made.

5. The Extent of the Researcher's Control Over the Study

In discussing the extent of the researcher's control over the study, it must be noted that there are factors which are actually uncontrollable and which constitute unsystematic control or error variance. The researcher has first to decide whether control is necessary and then to determine the nature and extent of the desired control.

Thus, the researcher has three alternatives: no control, unsystematic control, or systematic control. The current study uses no control, with the subjects having been ignorant as to the relationship being investigated. The independent variable was left uncontrolled with no limitation, other than thematic, in the direction of the subjects' responses. Obviously, "no control" does not mean that the researcher did not experience

control by analysis (sub-group analysis). No control simply means that the researcher did not manipulate the independent variable.

6. The Basic Sources of Data/The Method of Gathering Data

The researcher has two choices in regards to the source of his/her data: new data collected by the researcher for the express purpose at hand and available data (as they may be relevant to the research problem). Both methods have their particularly strong points, and if used discriminately, offer reliable data.

The method of gathering data to be used in the present study is the interview, which allowed for complete answers to questionnaire-like statements. The interview schedule allowed for discussion or qualification or response, which proved to be an aid to the subjects. On a few occasions, the interviewees misunderstood the question asked. The interview method was chosen because the interviewer was able to complete the form and to check on obviously biased answers. Well-trained interviewers aided in collecting a relative large number of interviews. (See Appendix B, for a copy of the interview schedule.)

The interviews were done mostly in the person's office in their city. A few were done by phone, but this was kept to a minimum as the interviewer desired personal contact with the interviewees. The reason for personal contact is that the phone can be cold and distant while the face-to-face interview allowed the interviewer to check on the "body language" of the interviewee while responding. If anything seems misplaced or the answer was not specific to the question, the interviewer was able to take corrective action. A pre-test study was conducted on a small number of respondents to determine the validity of the questionnaire.

7. The number of Variable Used in the Study/The Method of Measuring (Scaling) Each Single Variable

The decision on the number of variables to be used in the study is related to both pragmatics and the manner in which the study is conceptualized. The three alternatives open to the researcher are one variable, a few variables, or many variables. From these choices the researcher decides which one is consistent with the objectives of his/her research.

An in-depth analysis of one variable may promote a clearer, more precise meaning or definition of the concept, especially whether it should be conceived as having a number of components or several separate dimensions. By using a few variables, the researcher is not only seeking a clear definition of concepts, but also principles through which variables are related to each other as they form a system. Obviously, the more variables used, the more thorough and conclusive the analysis of the system will be. The difficulty, however, is that the data produced from the use of many variables may be cumbersome, and the researcher may be forced to deal with them in a purely discursive, descriptive fashion.

For the purposes of the present study, a few variables have been chosen. The relationship to be investigated deals with the concept of permissiveness in interpreting the law and perception of quality of justice, and six variables have been hypothesized as relevant and influential in determining this relationship. In addition, three other variables have been hypothesized as relevant in studying perceived quality of justice. This is not to say that the six variables would be exhaustive but have been identified merely in an initial attempt to determine some of the existent interrelationships involved in this system.

In dealing with the method of measuring each single variable, it is important to be familiar with Riley's discussion of single properties used in the research scheme. Identification of single properties is accomplished in two ways, either by describing the property or by actually measuring it. Measurement implies that the property is variable and, as such, can be ordered or classified in a meaningful way as specified by the conceptual scheme. All properties are conceived in term of variables for this research and will be measured via the interview schedule to determine their relative importance to the dependent variable. It was first determined if, as hypothesized, perception of quality of justice among court official, is a reflection of permissiveness in interpreting the law and, then, to what extent the three intervening variables affect this relationship.

Questions 1 through 8 are factual questions. These questions provide information relating to the following variables in the study: 1. Sex; 2. Economic Status; 3. Race. Specifically, Question 1 was used to measure sex; Question 7 measured economic status, and Question eight measured race. The additional questions are "fact sheet" questions related to variables that have been shown, via the literature review, to be correlated with perception of quality of justice but are not specifically used in the study. They are: 1. Martial Status; 2. Age; 3. Religion; and, 4. Political Preference.

Question 39 provides data on Permissiveness in Interpreting the Law, and from this question our independent variable (perception of quality of justice) is derived. This question forms a scale on Official's View of the Law. The decision arenas were derived from the researcher's knowledge of schools of thoughts in interpreting the Constitution, namely liberal and strict constructionist. Reliability was established by way of the test-retest method.

The two scales were then combined (See Typology I), yielding three empirical types of permissiveness in interpreting the law. The types are as follows:

1) Liberal-where the subjects feel the best interpretation of the law is to seek the intent of the lawgiver and they held a liberal view in interpreting the law.

2) Centrist-where the subjects feel the best interpretation of the law is to sometimes seek the intent of the lawgiver but most times allow the law to stand as written and they held a liberal view.

3) Conservative- where the subjects feel the best interpretation of the law is to apply its literal meaning, and they held a strict constructionist view of the law.

The dependant variable, the subject's perception of justice, is derived based on the aggregation of subjects' responses to hypothetical situation elicited in survey questions 16 – 22. In the case of each respondent, the arithmetic mean of their responses to seven questions (Questions 16 – 22) was calculated yielding a numeric between 1 and 6. Using the arithmetic mean of the seven questions (Questions 16 – 22) the cases were trichotomized in the categories of 1) fair perception of justice, 2), somewhat fair perception of justice, and 3) unfair perception, with each category containing a relatively equal number of cases.

Three other independent variables also utilized scale. Belief System-Agreement with Questions 27-31 shows a belief in a mythical system of justice. Disagreement (fail to check three of the five questions) shows a belief in the operational system. Trust in Founding Father Morals-Question 32 shows a high degree of trust; 33 moderate and disagreement with Question 35, low degree of trust. Who Governs America - Question 36 asked a direct question as to who governs America: Courts, President or Congress.

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Chapter 6

Description of the Data Demographically and Theoretically

The American judiciary plays a large role in shaping and defining our culture. The power of the judiciary stems from its dual responsibility of interpreting laws and applying those laws to a particular set of facts. At the highest level, the United States Supreme Court is charged with the ultimate responsibility of interpreting the fundamental law of the land—the United States Constitution. As such, this study seeks to explore how various subjects' views on level of permissiveness in interpreting our laws affect their perception of fairness with the judicial system. Simply stated, the study via the major hypothesis, and its sub-hypotheses, inquires of subjects their feelings on how laws should be interpreted (liberally, conservatively, or in between) and then determines how those feelings relate to their perception of justice.

Empirical data were collected by way of 465 questionnaires which were distributed to various judges, lawyers, and law students around the Eastern part of the country. The resulting data were compiled and are set out in this chapter. This chapter accomplishes two things. The first section provides a demographic profile of the sample, while the second section explicates the theoretical variables. The present chapter is solely concerned with a description of the variables, and the next chapter is analytical. The alternative procedure was to present both the description and analytical findings simultaneously. This alternative, however, was not chosen because separating the presentation from the analysis provides greater clarity.

Demographic Profile

The relevant population in this study includes lawyers, judges, and law students from various cities including but not limited to Miami, Florida; Washington D. C.; Macon, Georgia; Gainesville, Florida; and Tallahassee, Florida. The subjects were chosen by the researchers by contacting various law schools, law offices, and courts asking lawyers, judges and law students to voluntarily fill out a written survey. Table 1 shows the frequency of female respondents compared to male respondents. Table 2 segregates the population into three income groups, while Table 3 segregates by age group. Table 4 shows the subject's occupation.

Table 1
Demographic Profile

SEX

		Frequen	Perce	Valid	Cumulati Perce
Valid	Mal	262	56.	56.	56.
	Fema	203	43.	43.	100.
	Tota	465	100.	100.	

Table 2
Demographic Profile

INCOME 2

		Frequenc	Percen	Valid	Cumulativ Percen
Valid	Less than	258	55.5	56.5	56.5
	\$25,000 to	108	23.2	23.6	80.1
	\$60,000 or	91	19.6	19.9	100.0
	Total	457	98.3	100.0	
Missing	System	8	1.7		
Total		465	100.0		

Table 3
Demographic Profile

		Age			
		Frequen	Perce	Valid	Cumulati Perce
Valid	18-	156	33.	36.	36.
	26-	151	32.	35.	71.
	36-	81	17.	18.	89.
	50 and	44	9.5	10.	100.
	Tota	432	92.	100.	
Missing	System	33	7.1		
Tota		465	100.		

Table 4
Demographic Profile

		Classification			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Judge	53	11.4	11.6	11.6
	Lawyer	123	26.5	27.0	38.7
	Law Student	279	60.0	61.3	100.0
	Total	455	97.8	100.0	
Missing	System	10	2.2		
Total		465	100.0		

The majority of the subjects were males (56.3%) while females accounted for 43.7% (Table 1); earned less than \$25,000 per year (56.5%) (Table 2); under 35 years of age (71.1%); (Table 3); law school students (61.3%) (Table 4). Finally, the majority of the respondents describe themselves racially as Anglo-American, (58.7%) are African-American (30.2%), and Hispanic-American (11.1%). (Table 5). Normally, the sample error is calculated at this stage of the research. It was not calculated in this case because the study does not purport to generalize to a particular population.

Table 5
Demographic Profile

Race

		Frequen	Perce	Valid	Cumulati Perce
Valid	African	12	26.	30.	30.
	Anglo	24	52.	58.	88.
	Hispanic	46	9.9	11.	100.
	Total	41	89.	100.	
Missing	System	51	11.		
Tota		46	100.		

Classification of the Sample by the Theoretical Variables

It is necessary to use a system of measurement in order to classify each variable theoretically. Measurement was performed in such a manner so as to be both efficient and practical. Thus, the classification schemes are, in part, dictated by the items included in the scales and, in part, by the measuring procedure itself.

In order to classify the dependent variable, the “Perception of Fairness in the Justice System,” a scale was used. The scale “Perception of Fairness in the Justice System” was trichotomized, yielding components of the independent variable. These components are (fair, somewhat fair, and unfair) perception of the justice system.

It was not necessary to create a scale per se for the measurement of the independent variable (the extent of permissiveness in interpreting the law). Asking directly whether the respondent perceived that laws should be interpreted liberally, conservatively, or somewhere in between did this.

The Independent Variable -- The Extent of Permissiveness in Interpreting the Law

The independent variable, the subject’s view of permissiveness in interpreting the law (liberal, centrist, or conservative), was elicited from the following survey question:

39. I lean more toward laws being interpreted with a:
 _____ Liberal view _____ Centrist view _____ Conservative view.

This was done by asking directly whether the respondent would prefer laws to be interpreted liberally, conservatively, or somewhere in between the two. The rationale for eliciting this information in the form of a direct question as opposed to utilizing a scale is the inherent overlap in the three respective viewpoints on almost any major issue. This presents great difficulty in formulating appropriate questions from which a respondent's answers will clearly establish a preference towards any one of the foregoing three viewpoints. Therefore, we deal with how the subjects perceive themselves as to the issue of legal interpretation as opposed to a scaled view.

Table 6 gives a breakdown of those who believe laws should be interpreted liberally, those who believe laws should be interpreted conservatively, and those who believe that laws should be interpreted somewhere in between (centrist).

Table 6
 Permissiveness in Interpreting the Law

Q39

		Frequenc	Percen	Valid	Cumulativ Percen
Valid	Liberal	209	44.9	46.9	46.9
	Centrist	161	34.6	36.1	83.0
	Conservative	76	16.3	17.0	100.0
	Total	446	95.9	100.0	
Missing	System	19	4.1		
Total		465	100.0		

As Table 6 indicates, 209 (46.9%) of the valid respondents indicate that laws should be interpreted liberally; 76 (17.0%) of the valid respondents indicate that courts should adopt a conservative view in interpreting laws; and, finally, the remaining group

of 161 (36.1%) of the valid respondents indicate, that laws should be interpreted somewhere in the middle (centrist view).

Dependant Variable -- Perception of Fairness in the Justice System

Subjects were asked directly in questionnaire Question 38 about how they viewed the justice system.

1. The administration of justice in the U.S. is best described as:
 fair mostly fair unfair.

Table 7 reveals responses to the above question pertaining to fairness.

Table 7
 Perception of Fairness in the Justice System

Q38

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Fair	76	16.3	16.4	16.4
	Mostly fair	284	61.1	61.3	77.8
	Unfair	103	22.2	22.2	100.0
	Total	463	99.6	100.0	
Missing	System	2	.4		
Total		465	100.0		

It is significant that most respondents (61.3%) indicated that the justice system is mostly fair; 22.2 % unfair; and 16.4% fair (Table 7). “Fairness” is, of course, a relative term in that one individual’s notion of fairness may be quite different than that of another individual. Because perception of justice is key, the subject’s responses to real world hypothetical situations proved more probative of the subject’s true feeling irrespective of individual definitions of fairness. For this reason, this study utilizes an indirect method of determining perception of fairness set out as follows.

In order to complete the subject's perception of fairness in the justice system, this study uses a Likert-type scaling procedure. The response mode for the Fairness scale was a six-point, modified Likert-type continuum, which yielded a resulting numeric between "one" and "six":

1. I agree very much
2. I agree pretty much
3. I agree a little
4. I disagree a little
5. I disagree pretty much
6. I disagree very much

The dependant variable, the subject's perception of justice, is derived based on the aggregation of subject's responses to hypothetical situations elicited in survey questions 16 – 22. These questions, which relate to how a hypothetical judge would react, are aimed at probing the subjects' perception of justice as meted out by those who possess great power to influence or determine litigants' rights and privileges. It is hypothesized that the respondents' opinions pertaining to the partiality of judges is indicative of the respondents' perception of fairness as to the administration of justice in our society as a whole. The questions are as follows:

16.____Judges in the U. S. are more likely to show favor when judging a case which indirectly involves a close friend than someone they do not know.

17.____Judges in the U. S. are more likely to show favor when judging a case which indirectly involves a relative's financial status than someone they do not know.

18.____Judges in the U. S. are more likely to "throw the book" at a disagreeable defendant.

19.____Judges in the U. S. are more likely to show some favor in sentencing defendants whose lifestyles are like their own.

20._____Judges in the U. S. are likely to show some favor in sentencing defendants who are lodge brothers or sisters.

21._____Judges in the U. S. are likely to show some favor in sentencing a well-mannered defendant.

22._____Judges in the U. S. are likely to show some favor in sentencing a well-known defendant.

For seven of the twelve questions (Questions 16 –22), a numeric closer to “one” represents a very strong view that the justice system is unfair, and “six” represents a very strong view that the justice system is fair. For Question 15, the converse is true—a result closer to “one” represents a very strong view that the justice system is unfair, and a result closer to “six,” a very strong view that the justice system is fair. The remaining questions (23 – 26) are not utilized in this study and serve as filler material.

In the case of each respondent, the arithmetic mean of their responses to seven questions (Questions 16 – 22) was calculated yielding a numeric between 1 and 6. Question 15 was not included nor were questions 23 – 26 for the reason already stated.

Using the arithmetic mean of the seven questions (Questions 16 – 22), the cases were trichotomized in the categories of 1) fair perception of justice, 2) somewhat fair perception of justice, and 3) unfair perception with each category containing a relatively equal number of cases (See Table 8) all toward the end of facilitating quantitative comparison of the respondents’ perception of fairness. Note that small variations exist in the number of subjects in each group (Fair, Somewhat Fair, and Unfair) due to averaging and rounding functions in the software used to compile the data (SPSS).

Table 8

NTILES of TEST

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Unfair Perception	157	33.8	34.0	34.0
	Somewhat Fair Perception	150	32.3	32.5	66.5
	Fair Perception	155	33.3	33.5	100.0
	Total	462	99.4	100.0	
Missing	System	3	.6		
Total		465	100.0		

Intervening Variables – Race, Sex, and Economic Status

Race

Race was used as an intervening variable and was trichotomized into Anglo, Hispanic, and African American groups. The results are set forth in Table 9, which shows that the majority of respondents (58.7%) label themselves as Anglo-Americans. The remaining 41.3% listed themselves as either Hispanic (11.1%) or African American (30.2%). As stated above, this study does not purport to generalize a particular population, and, therefore, the sample group is not representative numerically of the respective racial group's involvement in the legal system.

Table 9

Race

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	African	125	26.9	30.2	30.2
	Anglo	243	52.3	58.7	88.9
	Hispanic	46	9.9	11.1	100.0
	Total	414	89.0	100.0	
Missing	System	51	11.0		
Total		465	100.0		

These researchers made concerted efforts to seek out locales with greater minority involvement in the legal system to get an adequate number of minority respondents. For example, the survey was brought to Howard University in Washington D.C. to gain

access to the large number of African-American law school students attending school there. Although statistics were not gathered as to where the individual respondents lived, we note that the overwhelming majority of Hispanic respondents come from the State of Florida. This is likely explained by a strong Cuban-American presence in Florida, especially in the southern region.

Table 10 crosstabulates the respondents' extent of permissiveness in interpreting the law with race, and Table 11 shows the same data utilizing percentages. Note that 69 of the 465 subjects failed to indicate either their race or failed to respond to the question inquiring as to the subject's view of permissiveness in interpreting laws.

Table 10

Q39 * Race

Count

		race			Total
		african	anglo	hispani	
Q39	Liberal	66	96	17	179
	Centrist	39	86	19	144
	Conservative	13	51	9	73
Total		118	233	45	396

Table 11 shows the same information as Table 10 but expressed as percentages.

Table 11

Q39 *Race Crosstabulation

		Rac			Total
		African	Anglo	Hispanic	
Q39	Liberal view	55.9%	41.2%	37.8%	45.2%
	Centrist view	33.1%	36.9%	42.2%	36.4%
	Conservative	11.0%	21.9%	20.0%	18.4%
Total		118	233	45	396

Race aside, 45.2% of all respondents felt that courts should liberally interpret law; 18.4% felt that courts should conservatively interpret law; and the remaining 36.4% fall somewhere in the middle (centrist view).

Table 11 reveals that the majority of African American respondents (55.9%) felt that courts should interpret laws liberally. Very few African Americans (11%) felt that laws should be interpreted conservatively in contrast to almost twice as many Anglo-Americans (21.9%). The marked difference between the two races may be explained in part by the use of the terms themselves, “conservative” versus “liberal” with African Americans. Table 12 shows political preference crosstabulated with race. Note that very few African Americans (2 of 122) indicated a Republican political preference. A greater number of Anglo-Americans (56 of 233) indicated they were Republicans. Modern Republicans, of course, tend to value conservatism more than Democrats who are traditionally thought to espouse more liberal views. Therefore, with very few African-American Republicans, it comes as no surprise that that African Americans were far less likely than the other two races to state that laws should be interpreted conservatively.

Furthermore, many African Americans may recall that it was the so-called “liberal” courts of the 1950s and 1960s who championed the civil rights movement. Therefore, it is probable that many African Americans see “liberal” interpretation of laws as a vehicle for social and economic equality.

Table 12

Race * Political Preference

Count		Political Preference				Total
		Democratic	Republica	Independe	Other	
Race	African	96	2	19	5	122
	Anglo	110	56	18	49	233
	Hispanic	13	14	11	2	40
Total		219	72	48	56	395

A large number of Hispanic-Americans (42.2%) felt that laws should be interpreted neither liberally nor conservatively, but, rather, somewhere in the center (centrist view). Notwithstanding, Hispanic-Americans on the whole appear least likely to espouse liberal views of legal interpretation as compared to the other two groups. This may be explained by the fact that more Hispanic-Americans in this study label themselves Republican than Democrat or Independent. Again, conservatism is valued within the Republican Party, and, therefore, fewer Hispanic-Americans (37.8%) indicated that they preferred a liberal view of legal interpretation.

Sex

Sex was also used as an intervening variable. Like race, sex was determined by asking subjects to indicate male or female. Sex was included in the demographic information section of the questionnaire. As Table 13 reveals, out of 465 respondents, 262 (56.3%) indicated they were male while 203 (43.7%) indicated that they were female.

Table 13
Extent of Permissiveness in Interpreting the Law

		SEX			
		Frequency	Percent	Valid	Cumulative Percent
Valid	Male	262	56.	56.	56.
	Female	203	43.	43.	100.
	Total	465	100.	100.	

Table 14 cross tabulates the respondents' extent of permissiveness in interpreting the law with sex, and Table 15 shows the same data utilizing percentages. Note that 19 of the 465 subjects failed to indicate a response to the question inquiring as to the subject's view of permissiveness in interpreting laws.

Table 14

Q39 * SEX

Count		SE		Tota
		Mal	Female	
Q3	Liberal	10	10	20
	Centrist	96	65	16
	Conservative	49	27	76
	Tota	25	19	44

Table 15

Q39 * SEX

		SE		Total
		Male	Female	
Q39	Liberal	42.9	52.1	46.9
	Centrist	37.8	33.9	36.1
	Conservative	19.3	14.1	17.0
Total	Count	254	192	446

Table 15 indicates that 52.1% of females felt that courts should liberally interpret laws compared to 42.9% of males. Traditional thinking is that females—a group historically discriminated against—would desire courts to interpret laws liberally in an effort to stamp out gender inequality. Therefore, females would be somewhat more likely to disfavor conservatism. The data appear to support this while males were more likely to state that courts should conservatively interpret laws (19.3% to 14.1%, respectively). Finally, 37.8% of males and 33.9% of females indicated that laws should be interpreted neither conservatively nor liberally, but somewhere in between.

Economic Status

The final intervening variable was economic status. Economic status was determined by asking the following question:

Income:

1. _____ less than \$10,000 per year
2. _____ \$10,000 to \$19,999 per year
3. _____ \$20,000 to \$24,999 per year
4. _____ \$25,000 to \$29,999 per year
5. _____ \$30,000 to \$39,999 per year
6. _____ \$40,000 to \$49,999 per year
7. _____ \$50,000 to \$59,999 per year
8. _____ \$60,000 and above

In order to better analyze the data, a scale was constructed. The scale was trichotomized into the categories of 1) modest means, 2) mid-level income, and 3) well-off. The category “modest means” was defined as those respondents who earn less than \$25,000. The category “mid-level income” was defined as those respondents who earn \$25,000 or more, but less than \$60,000. Finally, the category “well-off” was defined as those who earn \$60,000 or more.

Table 16 shows the survey results with respect to income. Note that 55.5% of the subjects were of modest means, earning less than \$25,000. This might be expected considering that the majority of the subjects (60%) were law school students, and it is likely indicative of law students’ difficulty in juggling the demands of work and, at the same time, concentrating on their studies. Table 16 further shows that 23.6% of the respondents fall into the “middle income” group of \$25,000 to \$59,000. Finally, a smaller percentage of respondents (19.9%) fall into the “well-off” group.

Table 16

INCOME 2

		Frequency	Percent	Valid	Cumulative Percent
Valid	Less than	258	55.	56.	56.
	\$25,000 to	108	23.	23.	80.
	\$60,000 or	91	19.	19.	100.
	Tota	457	98.	100.	
Missing	System	8	1.7		
Tota		465	100.		

Table 17

Q39 * INCOME 2

		INCOME 2			Tota
		Less \$25,00	\$25,000 \$59,00	\$60,00 or	
Q39	Liberal	50.4	42.7	42.0	46.9
	Centrist	31.5	39.8	45.5	36.2
	Conservative	18.1	17.5	12.5	16.9
Tota		248	103	88	439

Table 17 cross tabulates the respondents' preference in legal interpretation (liberal, conservative, or centrist) with the three categories described. The data show that 50.4% of subjects earning less than \$25,000 felt that courts should liberally interpret laws, compared to 42.7% of "middle income" subjects and 42% of "well-off" subjects. The apparent trend is that as income increases, the individual's view on legal interpretation moves towards a more Centrist view, away from liberal or conservative. This may be caused in part by law students being more apt to pick one ideological view- liberal or conservative, and defend that position. With further education, experience, and age, those in the legal profession may well begin to see issues not in terms of black or white, conservative or liberal, but rather in shades of gray. Such is the nature of the profession.

Chapter 7

Tests of the Hypotheses

In this chapter, the major hypotheses and sub-hypotheses are set forth and examined based on the empirical data. Each hypothesis and sub-hypothesis is first examined to determine whether statistical differences exist based on the independent variable—the subject’s view of permissiveness in legal interpretation (e.g. whether statistical differences exist between males who indicated a preference for a conservative interpretation of laws versus males who indicated a preference for centrist interpretation, versus males who indicated a preference for liberal interpretation). Secondly, the relevant population that is the subject of the hypothesis or sub-hypothesis is compared amongst all respondents (e.g. conservative males’ indication of fairness is compared against the indication of fairness of all the respondents).

Major Hypotheses and Justifications

The independent variable, the subject’s view of permissiveness in legal interpretation was categorized yielding three types—Liberal, conservative, and centrist. The dependent variable, the subject’s perception of fairness was categorized yielding three degrees of fairness—fair, somewhat fair, and unfair. The major hypotheses are as follows:

1. It is expected that in those cases where the subjects' interpretation of the law is liberal, their perception of quality of justice will be unfair.
2. It is expected that in those cases where the subjects' interpretation of the law is conservative, their perception of quality of justice will be fair.
3. It is expected that in those cases where the subjects' interpretation of the law is centrist, their perception of quality of justice will be somewhat fair.

The hypothesized relationship is illustrated in Figure 1 where the independent variable is subjects' interpretation of law, and the dependent variable is his/her perception of quality of justice.

Table 18
Interpretation of the Law and Perception of Quality of Justice

	Liberal	Centrist	Conservative
Fair			●
Somewhat Fair		●	
Unfair	●		

The Independent Variable—The Subject's Interpretation of the Law

The independent variable, the subject's view on legal interpretation (liberal, centrist, or conservative), as stated in the previous chapter was elicited by way of direct questioning which read as follows:

I lean more toward laws being interpreted with a: _____ Liberal view -
 _____ Centrist view _____ Conservative view.

The results of the foregoing question are shown in Table 19.

Table 19
Interpretation of the Law and Perception of Quality of Justice

Q3

		Frequency	Percent	Valid	Cumulative Percent
Valid	Liberal	20	44.	46.	46.
	Centrist	16	34.	36.	83.
	Conservative	76	16.	17.	100.
	Tota	44	95.	100.	
Missing	System	19	4.1		
Total		46	100.		

As Table 19 indicates, 209 or 46.9% of the valid respondents indicate that laws should be interpreted liberally. Therefore, given the hypothesized relationship, these 209 respondents should tend to indicate a perception that our justice system tends to produce unfair results.

Table 19 also indicates that 76 or 17.0% of the valid respondents indicate that law courts should adopt a conservative view in interpreting laws. Given the hypothesized relationship, these 76 respondents should indicate a perception that our justice is generally fair.

Finally, Table 19 indicates that the remainder of group—161 individuals or 36.1% of the valid respondents - indicate that laws should be interpreted somewhere in the middle (centrist view). Given the hypothesized relationship, these 161 respondents who label themselves as “centrists” in their view of legal interpretation should tend to indicate a perception that our justice is somewhat fair.

The Dependent Variable - The Subject’s Perception of Fairness

As stated in the previous chapter, the dependant variable, the subject’s perception of justice, is derived based on the aggregation of subjects’ responses to hypothetical situations elicited in survey questions 16–22.

The responses to questions 16– 22 were aggregated by way of taking the mean of the seven responses with a resulting numeric between “one” and “six” with “one” representing a very strong view that our justice system is unfair and “six” representing a strong view that our justice system is fair. The results showing the average responses for the liberal, conservative, and centrist groups are set forth in Table 20 as follows:

Table 20
Fairness of Justice System

Report			
TEST			
Q39	Mean	N	Std. Deviation
Liberal	2.7739	208	.9089
Centrist	3.0469	160	1.1149
Conservative	3.3103	76	1.0834
Total	2.9641	444	1.0348

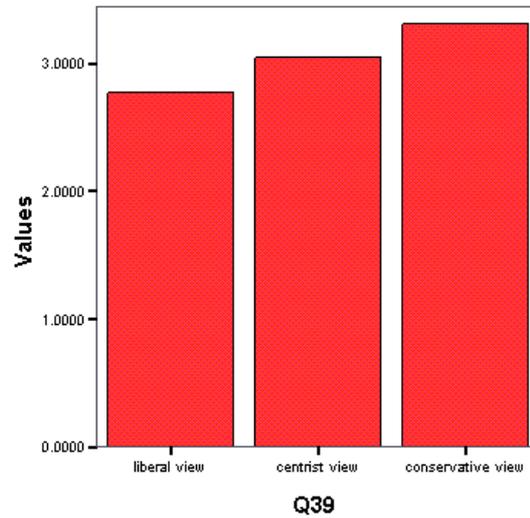
A mean closer to “one” indicates a perception that the legal system in the United State is more unfair while a mean closer to “six” indicates a perception that the legal system is more fair.

The results of Table 20 in graphic form follows in Figure 2.

Figure 2

Report

Statistics : Mean
Variables : TEST



The foregoing data clearly illustrate that differences exist between the three views (liberal, centrist, and conservative) and their views on the level of fairness in our system of justice with liberals indicating a lesser perception of fairness, conservatives indicating a greater perception of fairness, and centrists in the middle. The important question, however, is although differences are apparent, are they statistically significant? Note that this study does not purport to arrive at a definition for “fairness.” Instead “fairness” is examined by way of determining whether statistical differences exist between the various groups in responding to questions relating to fairness. (Questions 16–22) The method to determine this is One-Way Anova Testing (Table 21) with Post Hoc Analysis (Table 22).

Table 21
One-Way Anova Analysis

ANOVA

TEST

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	17.729	2	8.864	8.560	.000
Within Groups	456.677	441	1.036		
Total	474.406	443			

Table 22
Post Hoc Analysis

Multiple

Dependent Variable:

	(I)	(J)	Mea Differenc (I- J)	Std. Error	Sig.	95% Confidence Interval	
						Lower Bound	Upper Bound
LS	Liberal	Centrist	-.273 *	.107	.01	-	-6.2648E-
		Conservative	-.536 *	.136	.00	-	-
	Centrist	Liberal	.273 *	.107	.01	6.265E-	.483
		Conservative	-.263	.141	.06	-	1.519E-
	Conservative	Liberal	.536 *	.136	.00	.268	.804
		Centrist	.263	.141	.06	-1.5189E-	.542
Bonferro	Liberal	Centrist	-.273 *	.107	.03	-	-1.5801E-
		Conservative	-.536 *	.136	.00	-	-
	Centrist	Liberal	.273 *	.107	.03	1.580E-	.530
		Conservative	-.263	.141	.19	-	7.725E-
	Conservative	Liberal	.536 *	.136	.00	.208	.864
		Centrist	.263	.141	.19	-7.7253E-	.604

*. The mean difference is significant at the

One-Way Anova testing with post hoc analysis using least significant difference and Bonferroni testing procedures indicate that significant differences exist in the perception of fairness of the following groups:

1. liberal view of legal interpretation versus a centrist view (mean difference of .2730), and
2. liberal view of legal interpretation versus a conservative view (mean difference of .5364),

at an alpha level of .05. (See Table 22.) However, the data indicates no significant difference at the .05 level between the perception of fairness of the conservative group and the centrist group (mean difference of .2634).

Hypothesis 1 states that it is expected that in those cases where the subjects' interpretation of the law is liberal, their perception of quality of justice will be unfair. The rationale as stated in Chapter 4 is that because the subjects have an open mind as to how they view the law, they are not likely to form opinions that color their view of justice to the extent that they cannot or will not hear a different drummer. Liberal people are known for an attitude that allows for more than one point of view. They often see themselves as emancipated from tradition, convention, or dogma. As such, they are generally open to change. When the facts of justice are demonstrated to be inconsistent with their perception of justice, these are likely to fight change least of all.

Accordingly, the data strongly support hypothesis 1. It shows that the "liberal view" group indicated a lesser perception of fairness than the "centrist view" group and the "conservative view" group. This is further buttressed by the finding that the difference between the "liberal view" group and the other two groups is statistically significant.

Hypothesis 2 states that it is expected that in those cases where the subjects' interpretation of the law is conservative, their perception of quality of justice will be fair. Again, that rationale is that those with conservative views are the least likely to deviate from the norms of society. They are the backbone of the status quo. Some call them the diehards of society who desire to maintain the existing order and who resist and suspect proposal for change no matter how benign. By their faithful adherence to the rules which govern society, they march onward ever proclaiming the virtues of their way of life. These are likely to hold fixed opinions regarding quality of justice based on perceptions that, while not impossible to change, are not likely to change.

The data tend to support Hypothesis 2 in that those with conservative views perceive more strongly that the justice system is fair than “liberal view” group. The data also suggest that those with conservative views of legal interpretation indicate a greater perception of fairness than those who belong to the “centrist view” group. However, the difference between the two (centrist and conservative) cannot be proven statistically significant.

Hypothesis 3 states that it is expected that in those cases where the subjects’ interpretation of the law is centrist, their perception of quality of justice will be somewhat fair. The rationale is that people who take a centrist’s position are those who seek to be “safe” in their dealings. They are not likely to rock the boat. They are the type who add up the sum and split the difference down the middle. Centrists hold moderate views. They can be counted on to pull some positions from the right and some from the left. They are neither radical nor ultraconservative. As such, they are open to change but not as much as those who hold liberal views. When their perception of justice is shown to be inconsistent with the facts, they will weigh the position they should take. In the end, they will decide on a safe course somewhere in the middle of the two extremes.

The data support hypothesis 3. The “centrist group” falls squarely in the middle of the “liberal group” and the “conservative group.” Although there is statistically significant difference between the centrist group and “liberal group,” the data fail to show the same between the “centrist group” and the “conservative group.”

Viewed in the light of our theoretical framework, conservatives convey less a sense of praxis. Their influence in the justice system, however, is considerable. To the degree justice in fact is less than fair, this group, conservatives, appear to be in need of training to help them to see the distance between what they perceive to be true—justice is fair and the facts as presented via the literature review—justice being unfair especially where minority and women groups are concerned.

Thus far the focus has been only on whether statistical differences exist between the three groups (liberal, centrist, and conservative) as to perception of fairness. “Fairness” is, of course, a relative term. In order to further analyze the data it is necessary to adopt a quantifiable measure of “fairness”. Although this study does not attempt to define “fairness,” a system was developed to differentiate the three categories “Fair,” “Somewhat Fair,” and “Unfair”. It entailed simply ascertaining the mean responses of questions 16 – 22 and dividing those responses into three equal groups - “Fair,” “Somewhat Fair,” and “Unfair.” The result is shown in Table 23 expressed as percentages. Note that the “liberal” group indicated generally a lesser degree of fairness than the “centrist” or “conservative” groups.

Table 23
Degrees of Fairness

Q39 * NTILES of TEST

		NTILES of		
		Unfair Perception	Somewhat Fair Perception	Fair Perception
Q39	Liberal	37.0%	37.0%	26.0%
	Centrist	33.8%	28.1%	38.1%
	Conservative	23.7%	31.6%	44.7%
Total		33.6%	32.9%	33.6%

This system of categorization provides an easy method by which to compare the major and sub-hypotheses. Compare Table 23 to the hypothesized relationship in Figure 1.

Figure 1

Sample Data Results, Interpretation of Law

	Liberal	Centrist	Conservative
Fair	26.0%	38.1% ●	44.7% ●
Somewhat Fair	37.0%	28.1%	31.6%
Unfair	37.0% ●	33.8%	23.7%

The percentages in Table 23 are identical to those in Figure 1, but, in an effort to maintain consistency, the chart has been rearranged to conform to the format of the other tables set forth in Figure 1. Figure 1 indicates that most of the respondents with a preference for liberal interpretation of laws indicated a perception that the justice system is unfair (37.0%), while most of the respondents (38.1%) in the “centrist group” indicated that the justice system is fair. Finally, most of those subjects in the “Conservative group” (44.7%) indicated that the justice system is fair. The trend is clear that most of those who prefer conservative interpretation of law have a stronger perception of fairness than those who prefer more liberal or centrist interpretation of law. Those with liberal view of legal interpretation apparently see much more room for improvement in shaping the justice system to yield fair results. Those with conservative view of legal interpretation, true to the term “conservative,” apparently perceive that less change is necessary in the United States’ justice system to yield fair results.

Sub-Hypothesis – Race

At issue is whether race plays a factor in the perception of the quality of justice meted out by the justice system. To this end, sub-hypotheses have been derived based on the suspected impact that the subject's race has on the subject's perception of fairness within the justice system. The following table and graph (Table 24 and Figure 3) show the disparity between the views on fairness amongst the races – with African Americans indicating the lesser perception of fair (2.55), Hispanics Americans indicating the greatest indication of fairness (3.22), and Anglos in between (3.08).

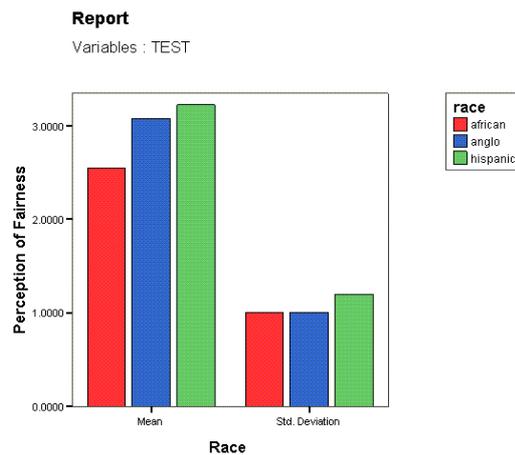
Table 24

Report

Mean

Race	TEST
African	2.551
Anglo	3.076
Hispanic	3.224
Tota	2.933

Figure 3



In viewing Table 24, recall that a mean closer to “one” indicates a perception that the legal system in the United States is unfair while a mean closer to “six” indicates a perception that the legal system is fair.

The data show (Table 24) that Hispanics perceive the United States’ legal system in a more favorable light than African Americans and Anglo-Americans. This is possibly because many Hispanic Americans are more recent immigrants into the United States than many African Americans and Anglo Americans. Many Hispanics-Americans, no doubt, came to America to escape economic conditions and tyranny in their homeland. To them, the United States is the land of opportunity where law rules and each person is treated justly under the law. Although records were not compiled to this effect, we note that most of the Hispanic-American survey respondents are of Cuban descent. Cuba, of course, is one of the last bastions of Marxist governance in the world, and Fidel Castro’s government is notorious for stifling the open exchange of ideas. Many Cuban-Americans, of course, see the Cuban judiciary, as a puppet of a corrupt and tyrannical regime. Therefore, the United States’ justice system in comparison with its system of checks and balances, the argument goes, produces fairer results.

African Americans, on the other hand, have experienced a history of injustice in America. Therefore, it is not surprising that of the three racial groups, African Americans are likely to view the law as being unfair most of all.

Are the difference in responses of the respective races statistically significant is the question addressed by Tables 25 and 26 again using the method of One-way Anova testing with Post Hoc analysis.

Table 25
One-Way Anova

ANOVA

TEST

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	27.073	2	13.537	12.828	.000
Within Groups	430.540	408	1.055		
Total	457.613	410			

Table 26
Post Hoc Tests

Multiple

Dependent Variable:

	(I)	(J)	Mea Differenc (I-	Std.	Sig	95% Confidence	
						Lower	Upper
LS	Africa	Angl	- *	.113	.00	-	-
		Hispan	- *	.177	.00	-	-
	Angl	Africa	.525 *	.113	.00	.302	.748
		Hispan	-	.165	.37	-	.177
	Hispan	Africa	.673 *	.177	.00	.324	1.021
		Angl	.147	.165	.37	-	.472
Bonferro	Africa	Angl	- *	.113	.00	-	-
		Hispan	- *	.177	.00	-	-
	Angl	Africa	.525 *	.113	.00	.253	.797
		Hispan	-	.165	1.00	-	.249
	Hispan	Africa	.673 *	.177	.00	.247	1.098
		Angl	.147	.165	1.00	-	.545

*. The mean difference is significant at

Despite the mean of Hispanic respondents being higher than the mean of Anglo respondents, the data suggests that difference between the perception of fairness between Anglo and Hispanic respondents was very small. In fact, the data show no significant differences between these two groups at an alpha level of .05 (See Tables 25 and 26).

Anglos, as percentage of total population, are the largest race group of the three. Most of the founders of the United States justice system were, of course, racially Anglo. Therefore, it comes as no surprise that Anglos generally indicated a greater perception of fairness (Table 24) than African Americans—a group historically discriminated against by law and social custom.

As stated, perception of fairness is relative and, therefore, varies from person to person and also between racial groups. Table 27 shows, for instance, on average, the mean result of African-American respondents with conservative views on legal interpretation (2.5) indicated the United States ‘justice system is unfair more so than Anglo-Americans (2.85) or Hispanic Americans (2.98) with liberal views on legal interpretation. This shows how strong a factor race plays in determining perception of fairness where even those African-Americans who prefer conservative interpretation of laws perceive less fairness than Anglos who prefer liberal interpretation. Table 27 shows the mean responses of each racial group broken down further by liberal, centrist, or conservative preference in legal interpretation. Recall that a mean response closer to “one” indicates a lesser perception of fairness. This table is broken up and explained in more detail at a later point in this study. The same is true with Table 28 which shows the responses of the three racial groups using the quantifiable measure of fairness which was described therein. These two tables are, notwithstanding, set out here to illustrate the stark differences between perceptions of fairness amongst the races.

Table 27
 Perceptions of the Degree of Fairness in the Justice System
 by Race

Report

TEST				
rac	Q3	Mean	N	Std.
African	Liberal	2.541	66	.911
	Centrist	2.424	39	1.043
	Conservative	2.551	13	.896
	Tota	2.504	11	.949
Anglo	Liberal	2.851	95	.855
	Centrist	3.183	85	1.034
	Conservative	3.391	51	1.084
	Tota	3.093	23	.996
Hispanic	Liberal	2.984	17	1.131
	Centrist	3.315	19	1.343
	Conservative	3.634	9	.961
	Tota	3.254	45	1.196
Tota	Liberal	2.749	17	.914
	Centrist	2.994	14	1.130
	Conservative	3.272	73	1.083
	Tota	2.935	39	1.044

Table 28
 Perceptions of the Degree of Fairness in the Justice System
 By Race

Q39 * NTILES of TEST * race

Race			NTILES of		
			Unfair Perception	Somewhat Fai Perception	Fair Perception
Africa	Q3	Liberal	48.5	27.3	24.2
		Centrist	64.1	20.5	15.4
		Conservative	53.8	23.1	23.1
	Tota	54.2	24.6	21.2	
Anglo	Q3	Liberal	29.5	44.2	26.3
		Centrist	25.9	30.6	43.5
		Conservative	19.6	37.3	43.1
	Tota	26.0	37.7	36.4	
Hispanic	Q3	Liberal	23.5	52.9	23.5
		Centrist	26.3	31.6	42.1
		Conservative	11.1	22.2	66.7
	Tota	22.2	37.8	40.0	

Sub-Hypothesis - Anglo

Anglo respondents form the largest single racial group in this study. This is, no doubt, because of the sizable presence of Anglos in the American population and more so within the legal community. The sub-hypotheses pertaining to Anglo respondents are as follows:

1. It is expected that in those cases where the subjects race is Anglo and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
2. It is expected that in those cases where the subjects' race is Anglo and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
3. It is expected that in those cases where the subjects' race is Anglo and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.

Viewed in table format the results should be as follows (Figure 4):

Figure 4
Perception of Quality of Justice by Race - Anglo

	Fair	Somewhat Fair	Unfair
Liberal			●
Centrist		●	
Conservative	●		

Table 28.1 shows the result of the data analysis. Recall that a mean closer to “one” indicates a perception that the legal system in the United States is unfair while a mean closer to “six” indicates a perception that the legal system is fair. From Table 28.1, the mean scores suggest the hypothesis was confirmed. It is clear that those Anglo respondents who indicated a preference for a more liberal view of legal interpretation indicated a lesser degree of fairness (2.851), while those Anglo respondents who

indicated a preference for a conservative view indicated a greater degree of fairness (3.391). The same information is provided in graphic form in Figure 5.

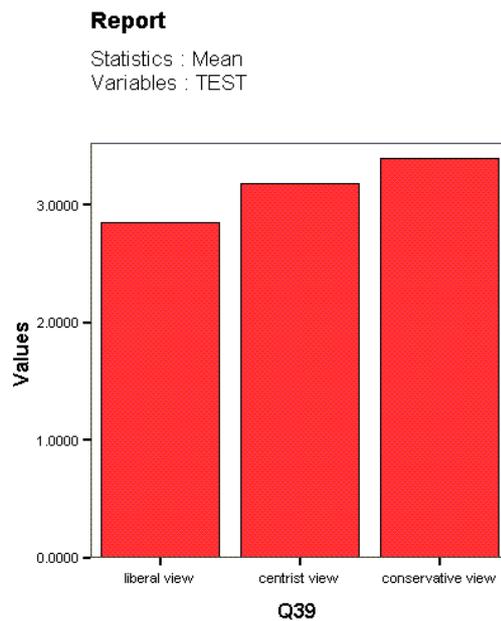
Table 28.1
Perception of Quality of Justice by Race-Anglo
Mean Scores

Report

Mean

Q39	TEST
Liberal	2.851
Centrist	3.183
Conservative	3.391

Figure 5



The data show the following:

1. Those who indicated a liberal preference as to legal interpretation indicated a lesser degree of fairness than those who indicated a centrist or conservative preference.
2. Those who indicated a conservative preference as to legal interpretation indicated a higher perception of fairness than those who indicated a liberal or

centrist preference.

- Those who indicated a centrist preference as to legal interpretation indicated a perception of fairness in the midrange.

The question remains - are the differences statically significant? The method for answering the foregoing questions is One-Way Anova Testing with Post Hoc Analysis.

(See Tables 29 and 30.)

Table 29
One-Way
ANOVA

TEST					
	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	10.791	2	5.395	5.655	.004
Within Groups	217.524	228	.954		
Total	228.314	230			

Table 30
Post Hoc Tests

Multiple

Dependent Variable:

	(I)	(J)	Mea Differenc (I- J)	Std. Error	Sig.	95% Confidence Interval	
						Lower	Upper
LS	Liberal	Centrist	-.145	.145	.02	-	-4.4893E-
		Conservative	-.169	.169	.00	-	-
	Centrist	Liberal	.332	.145	.02	4.489E-	.619
		Conservative	-.173	.173	.23	-	.132
	Conservative	Liberal	.540	.169	.00	.206	.874
		Centrist	.208	.173	.23	-	.548
Bonferro	Liberal	Centrist	-.145	.145	.07	-	1.947E-
		Conservative	-.169	.169	.00	-	-
	Centrist	Liberal	.332	.145	.07	-1.9470E-	.684
		Conservative	-.173	.173	.69	-	.209
	Conservative	Liberal	.540	.169	.00	.131	.949
		Centrist	.208	.173	.69	-	.625

*. The mean difference is significant at

One-Way Anova testing and post hoc analysis using least significant difference testing procedures indicate that significant differences exist at the .05 alpha level between the mean scores of the

- “Anglo conservative” and “Anglo liberal” groups with regard to their perception of fairness (mean difference of .5402), and between

- 2) “Anglo centrist” and “Anglo liberal” groups with regard to their perception of fairness (mean difference of .3322).

Hypothesis 1 states that it is expected that in those cases where the subjects’ race is Anglo and their interpretation of the law is conservative, perception of quality of justice will be seen as fair. Because Anglos comprise the largest racial group, it is expected that their results will track the major hypotheses for the same reasons as the major hypotheses. The data show the “Anglo-American Conservative” group perceives the justice system as fairer than the “Anglo-American Liberal” group and the “Anglo-American Centrist” group. Although a clear statistical difference exists between the “Anglo Conservative” and “Anglo Liberal” groups, the data fail to show a significant difference in the view of fairness difference between the “Anglo-American Conservative” group and the “Anglo-American Centrist” group.

As to Hypothesis 2, it is expected that in those cases where the subjects’ race is Anglo and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair. The data show, as predicted, that the “Anglo Centrist” group falls squarely in the middle of the “Anglo Liberal” group and the “Anglo Conservative” group. Although there are statistically significant differences between the “Anglo Centrist” group and “Anglo Liberal” group, the data fail to show the same between the “Anglo Centrist” group and the “Anglo Conservative” group.

As to Hypothesis 3, it is expected that in those cases where the subjects’ race is Anglo and their interpretation of the law is liberal, perception of quality of justice will be

seen as unfair. The data show the “Anglo Liberal” group indicated a lesser perception of fairness than the “Anglo Centrist” group and the “Anglo Conservative” group. This is further buttressed by the finding that the difference between the “Anglo Liberal” group and the other two groups is statistically significant.

The foregoing analysis dealt only with distinctions within the “Anglo” group. When Anglos are compared with the other two races as previously described above to qualify the independent variable to provide an operational method of comparing the individual’s perception of justice in three groups - “Fair,” “Somewhat Fair” and “Unfair,” the following is the result expressed as percentages (Table 31):

Table 31
Hypothesized Relationship - Anglo
 vs.
Sample Data Results, Interpretation of Law - Anglo
Hypothesized Relationship

	Fair	Somewhat Fair	Unfair
Liberal			●
Centrist		●	
Conservative	●		

Sample Data

	Fair	Somewhat Fair	Unfair
Liberal	26.3%	44.2% ●	29.5%
Centrist	43.5% ●	30.6%	25.9%
Conservative	43.1% ●	37.3%	19.6%

The foregoing method for establishing an operational method for comparing degrees of “fairness” allows for easy comparison to the hypothesized relationship. Comparing Table 31 with our hypothesized relationship set out in Figure 4, we see that

the hypothesized relationship underestimates the Anglo respondent's perception of fairness. Note that largest number of Anglo - Conservative group" respondents (43.1%) gave an opinion that the justice system is fair, while the largest number of "Anglo – Liberal group" respondents (44.2%) indicated a somewhat fair perception. It is apparent that Anglos as a whole indicated a strong perception of fairness in the justice system. As previously stated in Chapter 4, a strong possibility is that their views, based on experiences where the law has been basically fair unto them, project the law as fair to others.

Sub-Hypothesis - Hispanic

Hispanic- Americans comprise the smallest of the three racial groups at 11.1%. Although statistics were not gathered as to Hispanic-American representation within the legal community as a whole, this researcher notes that finding Hispanic-American subjects working within the legal system proved a daunting task, especially outside of South Florida. Because this study does not purport to generalize to a particular population, the statistics regarding Hispanic-Americans are nonetheless meaningful despite the small sample size (46).

The sub-hypotheses pertaining to Hispanic-American respondents are as follows:

1. It is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.

2. It is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
3. It is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is liberal, perception of quality of justice will be seen as somewhat fair.

The same three hypotheses viewed in table format are set out in Figure 6.

Figure 6
Perception of Quality of Justice by Race - Hispanic

	Fair	Somewhat Fair	Unfair
Liberal		●	
Centrist		●	
Conservative	●		

Table 32 shows the result of the data analysis.

Table 32
Perception of Quality of Justice by Race - Hispanic
Mean Scores

Report

Mean

Q39	TEST
Liberal	2.541
Centrist	2.424
Conservative	2.551

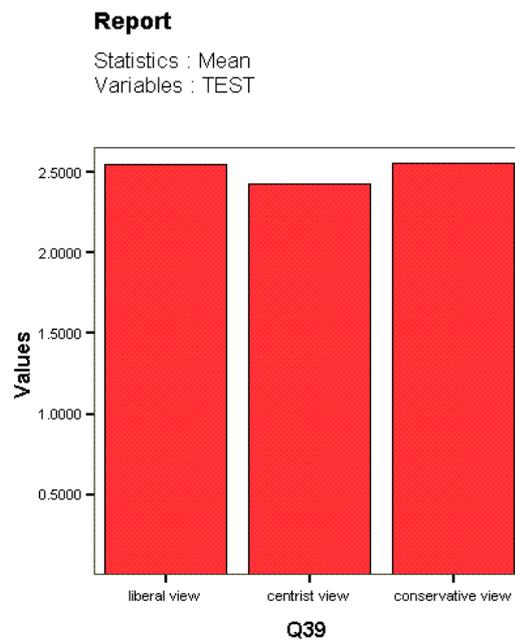
Recall that a mean closer to “one” indicates a perception that the legal system in the United States is unfair while a mean closer to “six” indicates a perception that the legal system is fair.

1. Those who prefer liberal interpretation (2.541) indicated a slightly lesser perception of fairness compared to those who define themselves as conservative (2.551).
2. Those who prefer conservative interpretation (2.551) indicated a greater perception of fairness than those who define themselves as liberal (2.541) or centrist (2.424).

- Those who prefer a centrist view of legal interpretation indicated a lesser perception of fairness than those who define themselves as conservative or liberal.

Figure 7 show the same information as Table 32 but in graphic form.

Figure 7



Again, to determine whether the differences between the three views are statically significant, the results of One-Way Anova Testing (Table 33) with Post Hoc Analysis (Table 34) follow.

Table 33
 One-Way ANOVA

TEST					
	Sum Square	df	Mean	F	Sig.
Between	.370	2	.185	.203	.817
Within	105.01	115	.913		
Total	105.38	117			

Table 34
 Post Hoc Tests

Multiple

Dependent Variable:

	(I)	(J)	Mea Differenc (I-	Std.	Sig	95% Confidence	
						Lower	Upper
LS	Liberal	Centrist	.117	.193	.54	-	.499
		Conservative	-9.8013E-	.290	.97	-	.564
	Centrist	Liberal	-	.193	.54	-	.265
		Conservative	-	.306	.67	-	.479
	Conservative	Liberal	9.801E-	.290	.97	-	.584
		Centrist	.127	.306	.67	-	.733
Bonferro	Liberal	Centrist	.117	.193	1.00	-	.586
		Conservative	-9.8013E-	.290	1.00	-	.694
	Centrist	Liberal	-	.193	1.00	-	.351
		Conservative	-	.306	1.00	-	.616
	Conservative	Liberal	9.801E-	.290	1.00	-	.714
		Centrist	.127	.306	1.00	-	.870

The data fail to show a significant difference in the view of the Hispanic-Americans' perception of fairness of any of the three groups (See Tables 33 and 34).

Therefore, as to Hypothesis 1, it is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is conservative, perception of quality of justice will be seen as fair. The data show the "Hispanic-American Conservative" group perceive the justice system as more fair than the "Hispanic-American Liberal" group and the "Hispanic-American Centrist" group. However, no clear statistical difference exists between any of the three groups.

As to Hypothesis 2, it is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair. The data show that those in the "Hispanic Centrist" group indicate a lesser perception of fairness than the "Hispanic Liberal" group. However, again, no clear statistical differences exist between the three groups.

As to Hypothesis 3, it is expected that in those cases where the subjects' race is Hispanic and their interpretation of the law is liberal, perception of quality of justice will

be seen as somewhat fair. The data show the “Hispanic Liberal” group falls in the middle of the other two groups in relating relative fairness. With no clear statistical difference between the three groups, it is unclear whether the labels “liberal, centrist, and conservative” have any effect on this group of Hispanic-American’s perception of fairness within the legal system.

The foregoing analysis dealt only with distinctions within the “Hispanic-American” group. When Hispanics are compared with the other two races by way of the method previously described to categorize the independent variable, the individual’s perception of justice in three groups - “Fair,” “Somewhat Fair” and “Unfair,” the following is the result (Table 35).

Table 35

**Hypothesized Relationship – Hispanic-American
vs.
Sample Data Results – Hispanic-American**

Hypothesized Relationship

	Fair	Somewhat Fair	Unfair
Liberal		●	
Centrist		●	
Conservative	●		

Sample Data

	Fair	Somewhat Fair	Unfair
Liberal	23.5%	52.9% ●	23.5%
Centrist	42.1% ●	31.6%	26.3%
Conservative	66.7% ●	22.2%	11.1%

Again, the results can be more easily compared with the hypothesized relationships. Comparing Table 35 with our hypothesized relationship set out in Figure 6, the data supports our hypothesis as to Hispanics who favor a liberal interpretation of the law (52.9%) and those favoring a conservative interpretation of the law (66.7) in how they would view quality of justice; but, we were off regarding those judged to be centrists. The hypothesized relationship underestimates the Hispanic-American respondent's perception of fairness. Again this may be due to, in part, the large number of Cuban-Americans who were included in this study who likely perceive a difference between the Cuban and the American justice system with the American justice system producing much fairer results.

Sub-Hypothesis – African-American

The sub hypotheses pertaining to African-American respondents are as follows:

1. It is expected that in those cases where the subjects' race is African American and their interpretation of the law is conservative, perception of quality of justice will be seen as somewhat fair.
2. It is expected that in those cases where the subjects' race is African American and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
3. It is expected that in those cases where the subjects' race is African American and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.

Viewed in table format the results should be as follows (Figure 8):

Figure 8
Perception of Quality of Justice by Race - African American

	Fair	Somewhat Fair	Unfair
Liberal			●
Centrist		●	
Conservative		●	

Table 40 shows the result of the data analysis. The mean score for African Americans with a liberal interpretation of the law is 2.54. This compares to 2.42 for those holding a centrist view and 2.55 for those holding a conservative view.

Table 36
Perception of Quality of Justice by Race - African American
Mean Scores

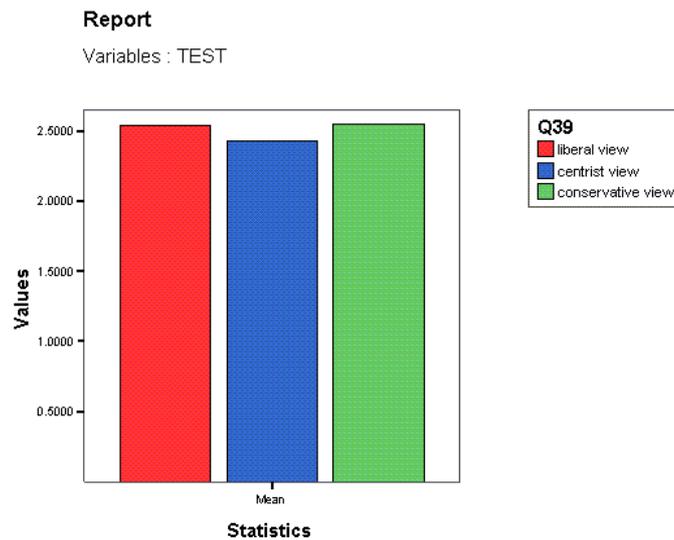
Report

TEST

Q39	Mean	N	Std. Deviation
Liberal	2.5418	66	.9111
Centrist	2.4245	39	1.0439
Conservative	2.5516	13	.8969
Total	2.5042	118	.9491

Figure 9 shows the same information but in graphic form.

Figure 9



Are the differences statistically significant? The method for answering the foregoing questions is One-Way Anova Testing with Post Hoc Analysis. (See Tables number 37 and 38.)

Table 37
One-Way ANOVA

TEST					
	Sum Square	df	Mean	F	Sig.
Between	.370	2	.185	.203	.817
Within	105.01	115	.913		
Total	105.38	117			

Table 38
Post Hoc Tests

Multiple Comparisons

Dependent Variable:

	(I)	(J) Q39	Mean Difference (I-J)	Std.	Sig.	95% Confidence	
						Lower	Upper
LSD	Liberal	Centrist	.1173	.1930	.545	-.2650	.4956
		Conservative	-.9,8013E-	.2900	.973	-.5842	.5646
	Centrist	Liberal	-.1173	.1930	.545	-.4996	.2650
		Conservative	-.1271	.3060	.679	-.7333	.4751
	Conservative	Liberal	9.801E-	.2900	.973	-.5646	.5842
		Centrist	.1271	.3060	.679	-.4791	.7333
Bonferron	Liberal	Centrist	.1173	.1930	1.000	-.3516	.5852
		Conservative	-.9,8013E-	.2900	1.000	-.7143	.6947
	Centrist	Liberal	-.1173	.1930	1.000	-.5862	.3516
		Conservative	-.1271	.3060	1.000	-.8706	.6154
	Conservative	Liberal	9.801E-	.2900	1.000	-.6947	.7143
		Centrist	.1271	.3060	1.000	-.6164	.8706

One-Way Anova testing and post hoc analysis using least significant difference testing procedure indicates that no significant differences exist at the .05 alpha level between the mean score of any of the three groups (liberal, centrist, and conservative).

Therefore, insufficient evidence exists to show that data track the hypotheses.

Nevertheless, the data show that the “African-American Conservative” group indicates a

greater perception of fairness than the other two groups with the “African-American Liberal” group falling not far behind. Surprisingly, the “African-American Centrist” group indicated a lesser overall perception of fairness than the “African-American” Liberal group, but the difference is not statistically significant.

The foregoing analysis dealt only with distinctions within the African-American group. When African-Americans are compared with the other two races via of the method previously described to categorize the independent variable, the individual’s perception of justice, in three groups - “Fair,” “Somewhat Fair” and “Unfair” - the following is the result (Table 39).

Table 39
Hypothesized Results
vs.
Sample Data Results – African-American
Hypothesized Relationship

	Fair	Somewhat Fair	Unfair
Liberal			●
Centrist		●	
Conservative		●	

Sample Data Results – African-American

	Fair	Somewhat Fair	Unfair
Liberal	24.2%	27.3%	48.5% ●
Centrist	15.4%	20.5%	64.1% ●
Conservative	23.1%	23.1%	53.8% ●

The results can now be easily compared with the hypothesized relationships. Upon viewing Table 39, it is clear that African Americans, regardless of whether

indicating a liberal, centrist, or conservative preference, feel overwhelmingly that the justice system is unfair. A full 53.8% of African Americans who indicated a preference for conservative interpretation of law stated an opinion that the justice system is unfair; an even larger percentage (64.1) in the centrist group registered that the justice system is unfair with the least percentage (48.5), though substantial. This is likely because in the past African Americans have endured systematic discrimination which was justified by the laws of land. For example, in the infamous Dred Scott case, the Supreme Court of the United States held that Dred Scott, an African American, had no rights which Anglos were bound to respect. Obviously, today discrimination is no longer outwardly advocated by the laws of the land, yet many African Americans perceive that fairness and justice is still lacking.

Comparing the Races

As stated, perception of fairness is relative and, therefore, varies from person to person and possibly, between groups. Table 40 shows the mean responses of all the races broken down by liberal, centrist, or conservative preference in legal interpretation. It shows, for instance, on average, African Americans with conservative views on legal interpretation (mean score 2.5) believe the United States' justice system is unfair more so than Anglo-Americans (2.85) or Hispanic-Americans (2.98) with liberal views on legal interpretation. The foregoing shows that race is a very powerful factor in determining the subject's perception of fairness.

Table 40

Crosstabulation of Race with Permissiveness in Interpreting Law
& Perception of Quality of Justice

Report

TEST

race	Q3	Mean	N	Std.
Africa	Liberal	2.541	66	.911
	Centrist	2.424	39	1.043
	Conservative	2.551	13	.896
	Total	2.504	118	.949
Anglo	Liberal	2.851	95	.855
	Centrist	3.183	85	1.034
	Conservative	3.391	51	1.084
	Total	3.093	231	.996
Hispanic	Liberal	2.984	17	1.131
	Centrist	3.315	19	1.343
	Conservative	3.634	9	.961
	Total	3.254	45	1.196
Total	Liberal	2.749	178	.914
	Centrist	2.994	143	1.130
	Conservative	3.272	73	1.083
	Total	2.935	394	1.044

Relating the finding to our praxis theoretical framework, we call the reader’s attention to the “liberating” quality of praxis. When liberating deeds follow a person’s words, praxis is evidenced. As one can see, the focus is on acting, but not just any action; right action is the goal. Right action occurs in the present study when justice is forwarded for those previously denied it. Blacks, having been denied justice in America, have been at the forefront of protests against unfair justice. The civil rights protests of the mid 20th century sought equality for all Americans. It was a fight for liberation not just for the black oppressed but equally so for the white oppressors.

Sub-Hypothesis – Sex

The next question addressed is whether the respondent’s sex plays a role in their perception of fairness within the justice system. Table 41 reports the mean of male responses at 2.9679 while the mean response for female responses is 2.9620. Recall that a mean closer to “one” indicates a perception that the legal system in the United States is

unfair, while a mean closer to “six” indicates a perception that the legal system is fair.

The foregoing shows that little disparity exists between the sexes regarding fairness .

Table 41
Perception of Quality of Justice by Sex
Mean Scores

Report			
TEST			
SE	Mea	N	Std.
Mal	2.962	262	1.056
Female	2.967	200	1.036
Tota	2.964	462	1.046

Sub-Hypotheses - Male

The sub-hypotheses are set out as follows:

1. It is expected that in those cases where the subjects are males and their interpretation of the law is conservative, perception of justice will be seen as fair.
2. It is expected that in those cases where the subjects are males and their interpretation of law is centrist, perception of quality of justice will be seen as somewhat fair.
3. It is expected that is those cases where the subjects are males and their interpretation of law is liberal, perception of quality of justice will be seen as unfair.

Again, the rationale for the hypotheses is that males will track the view of overall population. Viewed in table format the results should be as follows (Figure 9):

Figure 9

Perception of Quality of Justice by - Male

	Fair	Somewhat Fair	Unfair
Male Liberal			●
Male Centrist		●	
Male Conservative	●		

Table 42 shows the disparity amongst the three groups with regard to perception of fairness via their mean score. The data seemingly supports the hypothesized relationship with the “Male Liberal” group indicating a lesser perception of fairness (2.74%) than the other two groups; the “Male Centrist” (3.1%) group falls right in the middle, and the “Male Conservative” (3.14%) group indicates a greater perception of fairness.

Table 42
Perception of Quality of Justice by Males
Mean Score

Report

TEST

Q39	Mean	N	Std. Deviation
liberal view	2.7438	109	.9487
centrist view	3.1060	96	1.1241
conservative view	3.1474	49	1.0748
Total	2.9585	254	1.0549

Although the data tracks the hypothesized relationship, are the differences statistically significant? The method for answering the foregoing question is One-Way Anova Testing with Post Hoc Analysis. (See Tables 43 and 44.)

Table 43

ANOVA

TEST

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	8.860	2	4.430	4.077	.018
Within Groups	272.695	251	1.086		
Total	281.554	253			

Table 44

Multiple

Dependent Variable:

(I)	(J)	Mea Differen (I- J)	Std. Error	Sig.	95% Confidence Interval		
					Lower	Upper	
LS	Liberal	Centrist	.145	.01	-	-7.4807E-	
		Conservative	.179	.02	-	-5.0532E-	
	Centrist	Liberal	.362 *	.145	.01	7.481E-	.649
		Conservative	-4.1472E-	.183	.82	-	.318
	Conservative	Liberal	.403 *	.179	.02	5.053E-	.756
		Centrist	4.147E-	.183	.82	-	.401
Bonferro	Liberal	Centrist	.145	.04	-	-1.0517E-	
		Conservative	.179	.07	-	2.847E-	
	Centrist	Liberal	.362 *	.145	.04	1.052E-	.713
		Conservative	-4.1472E-	.183	1.00	-	.399
	Conservative	Liberal	.403	.179	.07	-2.8469E-	.835
		Centrist	4.147E-	.183	1.00	-	.482

*. The mean difference is significant at the

One-Way Anova testing and post hoc analysis using least significant difference testing procedure indicate that significant differences exist at the .05 alpha level between the mean scores of the

- 1) “Male Conservative” and “Male Liberal” groups with regard to their perception of fairness, and between
- 2) “Male Centrist” and “Male Liberal” groups with regard to their perception of fairness.

Note that the stated sub-hypotheses pertaining to males are identical to the major hypotheses pertaining to Anglos. This is because there were more males in the survey than females and Anglos make up the majority of subjects surveyed (58.7%). Therefore, we should expect their responses to dominate the survey results. The data support this, and the three sub-hypotheses are examined as follows.

As to Hypothesis 1, it is expected that in those cases where the subjects’ sex is male and their interpretation of the law is conservative, perception of quality of justice will be seen as fair. The data show the “Male Conservative” group perceive the justice

system as more fair than the “Male Liberal” group and the “Male Centrist” group.

Although a clear statistical difference exists between the “Male Conservative” and “Male Liberal” groups, the data fail to show a significant difference in the view of fairness difference between the “Male Conservative” Group and the “Male Centrist” group.

As to Hypothesis 2, it is expected that in those cases where the subjects’ sex is male and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair. The data show that the “Male Centrist” group falls in the middle of the “Male liberal” group and the “Male Conservative” group. Although there is statistically significant difference between the “Male Centrist” group and “Male Liberal” group, the data fail to show the same between the “Male Centrist” group and the “Male Conservative” group.

As to Hypothesis 3, it is expected that in those cases where the subjects’ sex is male and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair. The data show the “Male Liberal” group indicated a lesser perception of fairness than the “Male Centrist” view group and the “Male Conservative” group. This is further buttressed by the finding that the difference between the “Male Liberal” group and the other two groups is statistically significant.

The foregoing analysis dealt only with distinctions within the male group. When the responses of both males and females are aggregated by way of the method described before to categorize the independent variable to establish an operational definition of “fairness,” the following is the result (Table 45).

Table 45
Hypothesized Relationship
vs.
Sample Data Results – Male

Hypothesized Relationship

	Fair	Somewhat Fair	Unfair
Male Liberal			●
Male Centrist		●	
Male Conservative	●		

Sample Data Results – Male

	Fair	Somewhat Fair	Unfair
Male Liberal	26.6%	33.0%	40.4% ●
Male Centrist	41.7% ●	26.0%	32.3%
Male Conservative	36.7% ●	32.7%	30.6%

The method described for establishing an operational method for comparing degrees of “fairness” allows for easy comparison to the hypothesized relationship. Upon viewing Table 45, it is apparent that the hypothesized relationship and the sample data generally coincide with the exception of the responses of the “Male Centrist” group (41.7% indicating a “Fair” perception). Note that as hypothesized, the “Male Liberal” group indicated a very strong degree of unfairness (40.4%) than the “Male Conservative” group indicated.

Sub-Hypotheses – Female

The sub-hypotheses are set out as follows in Figure 10.

1. It is expected that in those cases where the subjects are females and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.

2. It is expected that in those cases where the subjects are females and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
3. It is expected that in those cases where the subjects are females and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.

Viewed in table format the results should be as follows:

Figure 10
Perceptions of the Quality by Sex - Females

	Fair	Somewhat Fair	Unfair
Female Liberal			●
Female Centrist		●	
Female Conservative	●		

Table 46 shows the mean responses of the three groups. The data show that the “Female Centrist” group falls squarely in the middle of the other two groups (mean of 2.95), with the “Female Liberal” group (mean of 2.8) indicating less fairness, and the “Female Conservative” (mean 3.6) group indicating greater fairness.

Table 46
Perception of Quality of Justice by Sex - Females
Mean Scores

Report

TES			
Q3	Mean	N	Std.
Liberal	2.807	99	.866
Centrist	2.958	64	1.103
Conservative	3.606	27	1.054
Tota	2.971	19	1.010

Again, One-Way Anova testing was used to determine whether statistical differences exist between the responses of the three groups.

Table 47
One-Way ANOVA

TEST					
	Sum Square	df	Mean	F	Sig.
Between	13.55	2	6.77	7.07	.00
Within	179.27	187	.95		
Total	192.83	189			

Table 48

Multiple

Dependent Variable:

	(I)	(J)	Mean Difference (I - J)	Std. Error	Sig.	95% Confidence Interval	
						Lower Bound	Upper Bound
LS	Liberal	Centrist	-.157	.157	.33	-	.158
		Conservative	-.647 *	.212	.00	-	-
	Centrist	Liberal	.151	.157	.33	-	.461
		Conservative	-.647 *	.224	.00	-	-
	Conservative	Liberal	.798 *	.212	.00	.379	1.218
		Centrist	.647 *	.224	.00	.204	1.090
Bonferro	Liberal	Centrist	-.157	.157	1.00	-	.228
		Conservative	-.647 *	.212	.00	-	-
	Centrist	Liberal	.151	.157	1.00	-	.530
		Conservative	-.647 *	.224	.01	-	-
	Conservative	Liberal	.798 *	.212	.00	.285	1.312
		Centrist	.647 *	.224	.01	.104	1.190

*. The mean difference is significant at the

One-Way Anova testing and post hoc analysis using the least significant difference testing procedure indicates that significant differences exist at the .05 alpha level between the mean score of the

1. "Female Conservative" and "Female Liberal" groups (mean difference of .798) with regard to their perception of fairness, and between
2. "Female Conservative" and "Female Centrist" groups (mean difference of .647) with regard to their perception of fairness.

As to Hypothesis 1, it is expected that in those cases where the subjects' sex is female and their interpretation of the law is conservative, perception of quality of justice will be seen as fair. The data show the "Female Conservative" group (59.3%) perceive

the justice system as more fair than the “Female Liberal” group (41.4%) and the “Female Centrist” group (39%). (See Table 53.)

As to Hypothesis 2, it is expected that in those cases where the subjects’ sex is female and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair. The data show that the “Female Centrist” group falls in the middle of the “Female Liberal” group and the “Female Conservative” group. Although there is statistically significant difference between the “Female Conservative” group and “Female Centrist” group, the data fail to show the same between the “Female Centrist” group and the “Female Liberal” group (See Table 48).

As to Hypothesis 3, it is expected that in those cases where the subjects’ sex is female and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair. The data show the “Female Liberal” group indicated a lesser perception of fairness than the other two groups consistent with the hypothesized relationship.

The foregoing analysis dealt only with distinctions within the female group. When the responses of both males and females are aggregated by way of the method described before to categorize the independent variable to establish an operational definition of “fairness,” the following is the result (Table 49).:

Table 49
**Hypothesized Relationship – Female
vs.
Sample Data Results**

Hypothesized Relationships

	Fair	Somewhat Fair	Unfair
Female Liberal			●
Female Centrist		●	
Female Conservative	●		

Sample Data Results – Female

	Fair	Somewhat Fair	Unfair
Female Liberal	25.3%	41.4% ●	33.3%
Female Centrist	32.8%	31.3%	35.9% ●
Female Conservative	59.3% ●	29.6%	11.1%

Upon viewing Table 49, it is apparent that the hypothesized relationship and the actual data results vary to an extent. It was hypothesized that “Female Liberal” and “Female Conservative” females would both perceive the justice system as fair. The data show, however, that clearly “Conservative Females” have a fair perception (59%) while “Liberal Females” indicated a somewhat fair (41.4%) or unfair perception (33.3%).

It is possible that the variability of responses amongst female respondents is indicative of competing desires. On one hand, a group of females yearns for more gender equity. Women have been major beneficiaries of changes that took place in the workplace stemming from the protest movements in the 1960s led by blacks, but including other racial groups, as well as women’s groups. As blacks are realizing their praxis or liberation via legislation outlawing discrimination in the workplace and in public accommodations, as well as in the courts, women too are doing the same. On the other hand, a number of women benefit from the system in its current form through privilege afforded indirectly via a spouse or partner. As stated, while there is a growing group of liberated women, the number has probably not reached the level so as to offset the impact men have on their views

Sub-Hypotheses – Economic Status

In order to compare subjects based on economic status, a scale was created based on annual income. The three categories are Modest Means – those earning less than \$25,000 per year; Middle Income – those earning from \$25,000 to \$59,999; and Well-Off – those earning \$60,000 or more.

The rationale for the economic status hypotheses is that money makes a difference as to how people view things. When people lack money, they also have much less of a vested interest in the system as those who are wealthier.

The mean responses of the three groups are shown in Table 50. It is apparent that little disparity exists between the views on fairness between the socioeconomic classes. Recall that a mean closer to “one” indicates a perception that the legal system in the United States is unfair, while a mean closer to “six” indicates a perception that the legal system is fair. The mean score for subjects earning less than \$25,000 per year is 3.0, while for those earning between \$25,000 and \$59,999 it is 2.85, and 2.78 for those earning \$60,000 or more.

Table 50

Perception of Quality of Justice by Income Mean Scores

Report

TES

INCOME 2	Mea	N	Std.
Less than	3.052	256	.976
\$25,000 to	2.855	107	1.042
\$60,000 or	2.781	91	1.212
Tota	2.951	454	1.047

Table 51 shows the crosstabulation of legal interpretation preference (liberal, conservative, or centrist) with perception of fairness segmented by the three income groups.

Table 51
Crosstabulation of Perception of Quality of Justice by Income

Q39 * NTILES of TEST * INCOME 2

INCOME 2			NTILES of		
			Unfair Perception	Somewhat Fair Perception	Fair Perception
Less than	Q39	Liberal view	36.8%	35.2%	28.0%
		Centrist view	23.4%	31.2%	45.5%
		Conservative view	17.8%	40.0%	42.2%
		Total	29.1%	34.8%	36.0%
\$25,000 to	Q39	Liberal view	41.9%	39.5%	18.6%
		Centrist view	34.1%	29.3%	36.6%
		Conservative view	44.4%	16.7%	38.9%
		Total	39.2%	31.4%	29.4%
\$60,000 or	Q39	Liberal view	35.1%	40.5%	24.3%
		Centrist view	55.0%	20.0%	25.0%
		Conservative view	18.2%	27.3%	54.5%
		Total	42.0%	29.5%	28.4%

Sub-Hypotheses – Modest Means

As pointed out above, most of the subjects surveyed indicated that they are of modest-means. This is because many of the subjects were law school students, many of whom were likely unemployed in an effort to more fully devote themselves to their studies. The sub-hypotheses relating to the subjects of Modest Means are set out as follows:

1. It is expected that in those cases where the subjects are of modest means and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.

2. It is expected that in those cases where the subjects are of modest means and their interpretation of the law is centrist, perception of quality of justice will be seen as unfair.
3. It is expected that in those cases where the subjects are of modest means and their interpretation of law is liberal, perception of quality of justice will be seen as unfair.

Figure 11 shows the hypothesized relationship in tabular format.

Figure 11
Economic Status and Perception of Quality of Justice

	Fair	Somewhat Fair	Unfair
Modest Means Liberal			●
Modest Means Centrist			●
Modest Means Conservative	●		

The mean score of the subjects with modest means can be seen in Table 52. Recall that a higher mean indicates a greater perception of fairness while a lesser means indicates a lesser perception.

Table 52
Economic Status and Perception of Quality of Justice - Modest Mean

Report

TEST			
Q3	Mean	N	Std.
Liberal view	2.833	12	.898
Centrist view	3.252	77	.964
Conservative	3.333	45	.977
Tota	3.055	24	.957

The data show the following:

1. Those who define themselves as liberal indicated a lesser degree of fairness (2.83) than those who prefer centrist or conservative interpretation of laws.
2. Those who define themselves as conservative indicated a higher perception of fairness (3.33) than those who prefer liberal or centrist interpretation of laws.

3. Those who prefer centrist interpretation of laws indicated a perception of fairness in the midrange (3.25).

Again, the method for determining whether the finds are statistically significant is One-Way Anova Testing with Post Hoc Analysis. (See Tables 53 and 54.)

Table 53
One-Way ANOVA

TEST					
	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	12.632	2	6.316	7.240	.001
Within Groups	212.852	244	.872		
Total	225.483	246			

Table 54
Multiple

Dependent Variable:

(I)	(J)	Mea Differen (I- J)	Std. Err.	Sig.	95% Confidence		
					Lower	Upper	
LS	Liberal	Centrist	-.135	.00	-	-	
		Conservative	-.162	.00	-	-	
	Centrist	Liberal	.419 *	.135	.00	.152	.685
		Conservative	-8.0713E-	.175	.64	-	.264
	Conservative	Liberal	.499 *	.162	.00	.180	.819
		Centrist	8.071E-	.175	.64	-	.425
Bonferro	Liberal	Centrist	-.135	.00	-	-9.3053E-	
		Conservative	-.162	.00	-	-	
	Centrist	Liberal	.419 *	.135	.00	9.305E-	.745
		Conservative	-8.0713E-	.175	1.00	-	.341
	Conservative	Liberal	.499 *	.162	.00	.108	.891
		Centrist	8.071E-	.175	1.00	-	.503

*. The mean difference is significant at

Note that in Table 54 an asterisk denotes that the mean difference is significant at the .05 level. The data in Table 54 show the “Modest Means Conservative” group perceive the justice system as fairer than the “Modest Means Liberal” group (mean difference of .4999) and the “Modest Means Centrist” group (mean difference of .4192). Although a clear statistical difference exists between the “Modest Means Conservative”

and “Modest Means Liberal” groups (mean difference of .4999), the data fail to show a significant difference in the view of fairness difference between the “Modest Means Conservative” Group and the “Modest Means Centrist” group.

The data show that the “Modest Means Centrist” group falls in the middle of the “Modest Means liberal” group and the “Modest Means Conservative” group. Although there is statistically significant difference between the “Modest Means Centrist” group and “Modest Means liberal” group, the data fail to show the same between the “Modest Means Centrist” group and the “Modest Means Conservative” group.

Further, the data show the “Modest Means Liberal” group indicated a lesser perception of fairness than the “Modest Means Centrist” group and the “Modest Means Conservative” group. This is further buttressed by the finding that the difference between the “Modest Means Liberal” group and the other two groups is statistically significant.

The foregoing analysis dealt only with distinctions within the modest means income group. When the responses of all the income groups are aggregated by way of the method described to categorize the independent variable to establish an operational method comparing degrees of “fairness”, the following is the result expressed in (Table 55).

Table 55

Hypothesized Relationship – Modest Means
vs.
Sample Data Results
Hypothesized Relationship – Modest Means

	Fair	Somewhat Fair	Unfair
Modest Means Liberal			●
Modest Means Centrist			●
Modest Means Conservative	●		

Sample Data Results – Modest Means

	Fair	Somewhat Fair	Unfair
Modest Means Liberal	28%	35.2%	36.8% ●
Modest Means Centrist	45.5% ●	31.2%	23.4%
Modest Means Conservative	42.2% ●	40.0%	17.8%

Table 55 shows 45.5% of the Modest Means Centrist group indicated a fair perception of justice contrary to our hypothesis. This group is, however, the only one that does not precisely track the hypothesized relationship. The data on the other two groups – Modest Means Conservative and Modest Means Liberal - appears exactly as hypothesized with 42.2% of the Modest Means Conservatives indicating a fair perception of justice and 28% of the Modest Means Liberals indicating the same. As is apparent, the Modest Means respondents largely indicated a perception that the justice system is fair, contrary to our hypothesis, which states, in essence, that those of lower income have less of an interest in see changes to the justice system. This is probably because most of the lower-income respondents were law school students – a group with great earning potential. Therefore, it comes as no surprise that these students would, by and large, see less need for change or perceive more fairness than those who are not similarly upwardly mobile.

Sub-Hypotheses – Middle-Level Income

The next largest group based on income is that of middle-level income. A total of 107 out of 454 respondents fall into this group. The sub-hypotheses are set out as follows:

1. It is expected that in those cases where the subjects are of middle-level income and their interpretation of law is conservative, perception of quality of justice will be seen as fair.
2. It is expected that in those cases where the subjects are of middle-level income and their interpretation of the law is centrist, perception of quality of justice will be seen as somewhat fair.
3. It is expected that in those cases where the subjects are of middle-level income and their interpretation of the law is liberal, perception of quality of justice will be seen as unfair.

The results should be as follows in Figure 12:

Figure 12
Economic Status and Perception of Quality of Justice - Middle Income

	Fair	Somewhat Fair	Unfair
Middle Level Income Liberal			●
Middle Level Income Centrist		●	
Middle Level Conservative	●		

Table 56 shows the result of the data analysis. The mean score for middle income subjects with a liberal preference for interpretation of the law is 2.63, 3.0 for those with a centrist preference for interpretation of the law, and 2.88 for those with a conservative preference for interpretation of the law.

Table 56

Economic Status and Perception of Quality of Justice - Middle Income

Report

TEST

Q39	Mean	N	Std. Deviation
Liberal view	2.6318	43	.7556
Centrist view	3.0197	41	1.1702
Conservative view	3.0714	18	1.2966
Total	2.8653	102	1.0504

Again, we see that those middle-income subjects with liberal views perceive less fairness than those with centrist or conservative views. The centrists fall in the middle and conservative group perceives the most fairness. Are the differences statistically significant? One-Way Anova Testing with Post Hoc Analysis follows in Tables 57 and 58.

Table 57
One-Way ANOVA

TEST

	Sum Squares	df	Mean	F	Sig.
Between	4.08	2	2.04	1.88	.15
Within	107.34	99	1.08		
Total	111.42	101			

Table 58
Post Hoc Analysis

Multiple

Dependent Variable:

	(I)	(J)	Mean Difference (I-J)	Std. Error	Sig.	95% Confidence Interval	
						Lower Bound	Upper Bound
LS	Liberal	Centrist	-.388	.227	.09	-.839	.063
		Conservative	-.439	.292	.13	-.966	.088
	Centrist	Liberal	.388	.227	.09	-.063	.839
		Conservative	-.050	.294	.86	-.632	.532
	Conservative	Liberal	.439	.292	.13	-.101	1.011
		Centrist	0.827	.294	.00	.242	1.412
Bonferro	Liberal	Centrist	-.388	.227	.09	-.839	.063
		Conservative	-.439	.292	.13	-.966	.088
	Centrist	Liberal	.388	.227	.09	-.063	.839
		Conservative	-.050	.294	.86	-.632	.532
	Conservative	Liberal	.439	.292	.13	-.101	1.011
		Centrist	0.827	.294	.00	.242	1.412

The data show that no significant differences exist between any the three views – liberal, centrist, and conservative. Therefore, we see that in the Middle-Income group

preference towards any of the three schools of thought in interpreting law becomes meaningless.

The foregoing analysis dealt only with distinctions within the middle-means income group. When the responses of all the income groups are aggregated by way of the method described, to categorize the independent variable to establish an operational method of categories degrees of “fairness,” the following is the result expressed in (Table 59).

Table 59
Sample Data Results – Middle Income

	Fair	Somewhat Fair	Unfair
Middle Level Income Liberal			●
Middle Level Income Centrist		●	
Middle Level Conservative	●		

	Fair	Somewhat Fair	Unfair
Middle Level Income Liberal	18.6%	39.5%	41.9% ●
Middle Level Income Centrist	36.6% ●	29.3%	34.1%
Middle Level Conservative	38.9%	16.7%	44.4% ●

Table 59 shows 41.9% of the Middle-Level Income group indicated a fair perception of justice as we hypothesized. This is, however, the only group that precisely tracks the hypothesized relationship. Of the individuals within the Middle-Income Centrist group, 36.6% indicated fair perception, while 44.4% of the Middle-Income

Conservative group indicated an unfair perception. Note that notwithstanding the deviation from our hypothesized relationship pertaining to the middle-income group, those respondents who indicated a fair perception (36.6%) barely edge past those who indicated an unfair perception (34.1%) as the dominant group. With this type of polarization, the average response of this group probably falls somewhere in the middle closer to “somewhat fair” perception. Viewed this way, this is in line with our hypothesis that Middle-Level Centrist would indicate a “somewhat fair” perception.

Sub-Hypotheses – Well-Off

The sub-hypotheses as to the Well-Off group are as follows:

1. It is expected that in those cases where the subjects are well off and their interpretation of the law is conservative, perception of quality of justice will be seen as fair.
2. It is expected that in those cases where the subjects are well off and their interpretation of the law is centrist, perception of quality of justice will be seen as fair.
3. It is expected that in those cases where the subjects are well off and their interpretation of the law is liberal, perception of quality of justice will be seen as somewhat fair.

Viewed in tabular format the results should be as follows (Figure 13).

	Fair	Somewhat Fair	Unfair
Well-Off Income Liberal		●	
Well-Off Income Centrist	●		
Well-Off Income Conservative	●		

Table 60 shows the result of the data analysis via the mean scores for the subjects with a well-off economic status.

Table 60
Economic Status and Perception of Quality of Justice-Well Off
Mean Scores

Report

TEST

Q39	Mean	N	Std. Deviation
Liberal view	2.6494	37	1.0476
Centrist view	2.6733	40	1.2676
Conservative	3.5455	11	1.2418
Total	2.7723	88	1.1992

Note again, the subjects with conservative views expressed a marked perception of fairness (3.54) while those with centrist views fall in the middle (2.67), and those with liberal views perceiving fairness less (2.64) than the other two groups. One-Way Anova Testing with Post Hoc Analysis follows in Tables 61 and 62.

Table 61
One-Way ANOVA

TES

	Sum of Squares	df	Mean	F	Sig.
Between	7.526	2	3.763	2.720	.072
Within	117.591	85	1.383		
Total	125.117	87			

Table 62

Multiple Comparisons

Dependent Variable:

(I) Q39	(J) Q39	Mean Difference (I-J)	Std. Error	Sig.	95% Confidence		
					Lower Bound	Upper	
LSD	Liberal	Centrist view	-2.3912E-	.2683	.929	-.5573	.5085
		Conservative	-.8960*	.4039	.029	-1.6991	-9.2923E-
	Centrist view	Liberal	2.391E-	.2683	.929	-.5095	.5573
		Conservative	-.8721*	.4004	.032	-1.6683	-7.5942E-
	Conservative	Liberal	.8960*	.4039	.029	9.292E-	1.6991
		Centrist view	.8721*	.4004	.032	7.594E-	1.6683
Bonferroni	Liberal	Centrist view	-2.3912E-	.2683	1.000	-.6791	.6313
		Conservative	-.8960	.4039	.088	-1.8825	9.046E-
	Centrist view	Liberal	2.391E-	.2683	1.000	-.6313	.6791
		Conservative	-.8721	.4004	.097	-1.8501	.1059
	Conservative	Liberal	.8960	.4039	.088	-9.0464E-	1.8825
		Centrist view	.8721	.4004	.097	-.1059	1.8501

*. The mean difference is significant at the .05

The data show significant differences exist between the views of Conservative Well-Off subjects (mean difference of .8960 for liberal and .8721 for centrist) as compared to the other two groups. The data fail to show, however, that significant difference exist between the Liberal Well-Off subjects and the Centrist Well Off subjects (mean difference of .0239).

The foregoing analysis dealt only with distinctions within the well-off income group. When the responses of all the income groups are aggregated by way of the method described to categorize the independent variable to establish an operational method of comparing degrees of “fairness”, the following is the result (Table 63).

Table 63

Hypothesized Relationship

	Fair	Somewhat Fair	Unfair
Well-Off Income Liberal		●	
Well-Off Income Centrist	●		
Well-Off Income Conservative	●		

Sample Data Results – Well Off

	Fair	Somewhat Fair	Unfair
Well-Off Liberal	24.3%	40.5% ●	35.1%
Well-Off Centrist	25.0%	20.0%	55.0% ●
Well-Off Conservative	54.5% ●	27.3%	18.2%

The data show (Table 63) that those respondents who are well-off with centrist views of legal interpretation indicated a perception that the justice system is unfair (55%). This is the only deviation from the hypothesized relationship. However, when looking

closer at the well-off centrist group, it becomes apparent that 75% of the respondents indicated a somewhat fair or unfair perception. The same holds true with the well-off liberal group with 75.6% indicating a somewhat fair or unfair perception of justice. This seems to suggest that the label centrist and liberal are less important to the well-off income group respondents which is supported in the conclusion that no statistically significant differences exist between the two groups.

Notwithstanding, it is clear that the well-off conservative group perceives a great deal of fairness with more than half indicating a “Fair” perception of justice. As such, two very differing mindsets become apparent with the well-off conservative group versus the other two groups (non-conservatives). This split is likely due to those who label their preference or belief system as “conservative” are very likely to be advocates of the status quo. This is particularly important considering that these individuals qualify as well-off individuals. The well-off centrist and liberal respondents appear more likely, despite their wealth, to view less fairness in the justice system as it currently stands.

It is apparent that there is not a linear relationship between increased income and increased perception of fairness. Other variables intervene. It is also important to note that although many of respondents appear to be poor, many, if not most, have great earning potential. As explained previously, many of the respondents are law school students and, as such, may not view themselves on the same level as the “oppressed poor.” These law students, despite being of limited means, may recognize that in anticipation of becoming a member of the upper-income groups, the justice system is to be embraced in its current form. Contrast this with a poorer person with little hope of becoming a member of the “well-off group.” This individuals’ mindset or perception of

justice may cause them to rebel or reject the notion that justice is available for them.

This, in turn, may have a very real effect on the result achieved.

Hunt (1) explained how the oppressed have unwittingly participated in their own oppression. He shows that praxis as liberation begins for the poor when the poor reach conscientization. The term conscientization refers to learning to perceive social, political and economic contradictions within the system and to take corrective action against such contradictions. Conscientization helps to explain the gains in the economic status of both women and minorities in the U.S. over the past half century.

References

(1) Hunt, D. G. (1975) "Toward an Administrative Theory of Black Liberation", *The Journal of Afro-American Issues*, 3, 2:236-245.

Chapter 8
Who Governs America and Trust in Founding Fathers' Morals

Who Governs America

As stated in Chapter 4, the United States' democratic form of government is predicated upon a calculated balance between its three branches – Legislative, Executive, and Judicial. This system of balances is to ensure that no one governmental arm becomes dominant.

In questioning the subjects regarding “Who Governs America,” the following question was asked.

36. Which branch of government dominates public policy in the U.S.? _____ Courts, _____ Congress, _____ Executive.

The results of the foregoing question are set out in Table 64.

Table 64
 Who Governs America

Q3

		Frequen	Percent	Valid	Cumulative Percent
Valid	Courts	96	20.	21.	21.
	Congress	26	57.	59.	81.
	Executive	82	17.	18.	100.
	Total	44	95.	100.	
Missing	System	21	4.5		
Total		46	100.		

As Table 64 reveals, most subjects (59.9%) believe that Congress is the dominant branch of government. The Courts are a distant second at 21.6%, and the executive branch comes in last at 18.5%. It is surprising that so few respondents, all of whom are involved in the legal system in one way or another, indicated that the Courts are the dominant branch, especially considering the power of the Courts to ultimately nullify acts

of Congress by finding them unconstitutional. This finding may be the result of the hands-off approach that the Courts have taken as they have become more conservative. The liberal courts of the 1950s and 1960s, however, wielded great power and initiated great social change. This finding also may be due to Congress' role in passing laws coupled with its role as holder of the nation's purse strings.

Degree of Trust in Founding Fathers' Morals

The founding fathers are considered by average Americans as larger than life figures who were committed to breaking the chains of tyranny and bringing justice to the inhabitants of the New World. Great men like George Washington, Alexander Hamilton, Benjamin Franklin, and Thomas Jefferson are so highly esteemed that they are memorialized on our nation's currency. Despite lofty words and noble ideals, history shows that many of the Founding Fathers were no more open to freedom for all than others of their day. Because of this dichotomy of the perception of the Founding Fathers and their failure to champion the rights of all citizens, it is fitting that we should look at survey respondents' views as to Founding Fathers morality.

The survey asked three questions to inquire into the respondents' perception as to the morality of the Founding Fathers. Each of the questions is presented (Questions 32, 33, and 35) followed by a table (Tables 65, 66 and 67) showing the responses of the survey participants.

32._____The Founding Fathers of the U. S. were men of outstanding character.

Table 65
Perception as to the Morality of the Founding Fathers

Q3

		Frequenc	Percent	Valid	Cumulative Percent
Valid	Yes	192	41.	44.	44.
	No	240	51.	55.	100.
	Tota	432	92.	100.	
Missing	System	33	7.1		
Total		465	100.		

The data show that 192 or 44.4% of the respondents indicated that the Founding Fathers were men of outstanding character, while 240 or 55.6% indicated that they were not.

33._____The Founding Fathers of the U. S. were average men insofar as morals are concerned.

Table 66

Q33

		Frequency	Percent	Valid	Cumulative Percent
Valid	Yes	338	72.	77.	77.
	No	101	21.	23.	100.
	Total	439	94.	100.	
Missing	System	26	5.6		
Total		465	100.		

The data show that 338 or 77.0% of the respondents indicated that the Founding Fathers were morally average, while 23.0% indicated that they were not.

35._____The Founding Fathers of the U. S. were good examples of men who believed in liberty and Justice for all U. S. citizens.

Table 67

Q35

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	175	37.6	39.2	39.2
	Yes	271	58.3	60.8	100.0
	Total	446	95.9	100.0	
Missing	System	19	4.1		
Total		465	100.0		

The data show that 175 or 39.2% of the respondents indicated that the Founding Fathers believed in liberty and justice for all U.S. citizens while 23.0% indicated that they did not.

Note that Table 65 shows that 55.6% of respondents felt Founding Fathers were not men of outstanding character. This result is surprising in light of the results to Question 35 set out in Table 67 where 60% of the respondents felt that the Founding Fathers were good examples of men who believed in liberty and justice for all U. S. citizens. A majority of respondents (77%) as indicated in Table 66 felt that the Founding Fathers were morally average.

Testing Hypotheses

Who Governs America

The hypotheses as to which of the three branches of government truly “governs” America are set out as follows:

1. It is expected that in those cases where the subjects’ perception as to who governs America is the Congress, their perception of quality of justice will be fair.
2. It is expected that in those cases where the subjects’ perception as to who governs America is the President, their perception of quality of justice will be fair.
3. It is expected that in those cases where the subjects’ perception as to who governs America is the Courts, their perception of quality of justice will be unfair.

Table 68 shows the respective mean indication of fairness of the respondents grouped by the branch of government they deemed dominant.

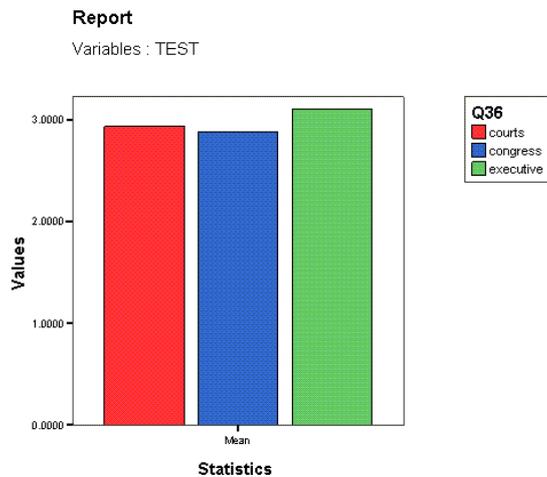
Table 68

Who Governs America and Perception of Quality of Justice Mean Scores

Report

TEST			
Q3	Mea	N	Std.
Courts	2.935	96	1.088
Congress	2.884	265	1.033
Executive	3.105	82	.972
Total	2.936	443	1.035

Table 68 viewed in graphic format is set out as follows.



Therefore we see that most respondents indicated that Congress is the dominant branch of government. Contrary to hypothesis 1, those who indicated that Congress is the dominant branch, overall, indicated a lesser degree of fairness than those who identified the Courts or the Executive branch as most dominant. Those respondents who indicated that the Executive branch is the most dominant also indicated a greater degree of fairness, overall, than those who indicated the other two branches.

To test for significant difference between the three branches, One-Way Anova test with Post Hoc analysis was employed. The results are shown in tables 69 and 70.

Table 69

One-Way ANOVA

TEST					
	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	3.059	2	1.530	1.429	.241
Within Groups	471.077	440	1.071		
Total	474.136	442			

Table 70

Multiple Comparisons

Dependent Variable:

	(I) Q36	(J) Q36	Mean Difference (I-J)	Std.	Sig.	95% Confidence	
						Lower	Upper
LSD	Courts	Congres	5.063E-	.1233	.681	-.1916	.2929
		Executiv	-.1704	.1556	.274	-.4762	.1354
	Congres	Courts	-5.0631E-	.1233	.681	-.2929	.1916
		Executiv	-.2210	.1308	.092	-.4780	3.596E-
	Executiv	Courts	.1704	.1556	.274	-.1354	.4762
		Congres	.2210	.1308	.092	-3.5959E-	.4780
Bonferroni	Courts	Congres	5.063E-	.1233	1.000	-.2456	.3463
		Executiv	-.1704	.1556	.822	-.5443	.2035
	Congres	Courts	-5.0631E-	.1233	1.000	-.3468	.2456
		Executiv	-.2210	.1308	.275	-.5352	9.320E-
	Executiv	Courts	.1704	.1556	.822	-.2035	.5443
		Congres	.2210	.1308	.275	-9.3203E-	.5352

Table 70 shows that no significant differences exist between any of the responses.

Therefore we are unable to confirm our hypotheses.

Trust in Founding Fathers' Morals

The hypotheses regarding the subjects' trust in Founding Fathers' Morals are set out as follows:

1. It is expected that in those cases where trust in the Founding Fathers' morals is much, the perception of quality of justice will be fair.
2. It is expected that in those cases where trust in the Founding Fathers' morals is moderate, the perception of quality of justice will be somewhat fair.
3. It is expected that in those cases where trust in the Founding Fathers' morals is little, the perception of quality of justice will be unfair.

Table 71 shows the responses of those subjects who indicated that the Founding Fathers were men of outstanding morals. As is apparent, 40.8% of those individuals indicated a fair perception of the justice system, while only 28.8% stated that the justice system is unfair.

Table 71
 Much Trust in Founding Fathers' Morals and
 Perception of Fairness of Justice

Q32 * NTILES of TEST

		NTILES of			Total
		Unfair Perception	Somewhat Fair Perception	Fair Perception	
Q3	Yes	55 28.8	58 30.4	78 40.8	191 100.0

Table 71 shows the responses of those subjects who indicated that the Founding Fathers lacked outstanding morals. The response of these subjects as to fairness in the justice system is more neutral with 36.3% indicating an unfair perception and only 27.1% indicating a fair perception. These data support Hypotheses 1, and 3, in that those that disagree that the Founding Fathers were men of outstanding morals tend to also indicate less fairness in the justice system.

Table 72
 Moderate Trust in Founding Fathers' Morals and
 Perception of Fairness of Justice

Q32 * NTILES of TEST

			NTILES of			Total
			Unfair Perception	Somewhat Fair Perception	Fair Perception	
Q3	No	Count % within	87 36.3	88 36.7	65 27.1	240 100.0

As to Hypothesis 2, Table 72 shows that of those subjects who indicated that the Founding Fathers were men of average morals, the largest group (36.7%) stated a somewhat fair perception of the justice system. These data support Hypothesis 2, statement that those respondents who trust in the Founding Fathers' morals is moderate are likely to indicate a perception of quality of justice of somewhat fair.

Table 73
 Little Trust in Founding Fathers' Morals and
 Perception of Fairness of Justice

Q33 * NTILES of TEST

			NTILES of			Total
			Unfair Perception	Somewhat Fair Perception	Fair Perception	
Q33	Yes	Count	111	121	105	337
		% within Q33	32.9%	35.9%	31.2%	100.0%

As to Hypothesis 3, Table 73 shows that those subjects who indicated that the Founding Fathers were men of little morals, the largest group (35.9%) indicated a somewhat fair perception of the justice system contrary to our hypothesis that this group would indicate an unfair perception of justice.

Conclusion and Interpretation

This study does not purport to analyze the degree of injustice in the United States. The focus is rather on perception focusing on the difference between the theory of justice for all and the results perceived by those involved in the system. This divide between the theory and the subjects' perception in practice is of great concern.

It is clear that perception of justice varies among the groups, which are the subject of this study. Out of all the intervening variables, race stands out as the one variable in which greatly divergent differences of opinion can be seen regarding perception of fairness. As shown previously, our hypotheses underestimated the effect that race would play in determining whether the subject's interpretation of justice is fair. It is further clear that the promise of justice for all and blind justice is not being realized, at least in terms of perceptions of African Americans. What is troubling are the facts shown by various authors quoted throughout this work that certain groups have systematically been denied justice. These studies, when coupled with the general unfair perception of justice, show the need for more thorough examination for the reason for this divide between the theory of equal justice and practice. Further attention should be given to the apparent divide in perception and remedial measures enacted so as to more closely bridge the gap between the perceptions of the diverse groups regarding fairness within the justice system.

Unfairness in perception, of course, is not as insidious as unfairness in fact. However, both go hand in hand in that if certain groups feel that the justice system is unfair, and that members within that group are not receiving just results, the group members may resort to decreasing their participation in the legal process; they may stage

outright revolt against the current system, or they may tolerate the system all the while employing subtle acts of defiance (a prime example is jury nullification). Unfairness in perception acts as a barrier to true equality in that the distrust that is fostered can taint even results that are in fact, fair.

Many authors have suggested that a thorough inquiry into each individual case to determine if any bias exists is sufficient to root out the problem of fairness in fact. The logic goes that by ensuring the “good” people are in decision-making positions, the end result will be fair. This approach, however, ignores systemic bias within the system. Systemic bias affects justice; in fact it leads to an unfair result even in the absence of overt discrimination. Perceived justice also suffers when those in charge of the justice system are unwilling to consider systemic problems and focus strictly on whether there is showing of overt injustice.

In an attempt to mete out just results within our legal system, the courts may be well advised to perform a similar inquiry as that utilized in of the process of alleging employment discrimination under federal law. In federal discrimination cases, Courts have interpreted Title VII of the Civil Rights Act of 1964 to prove essentially two methods for showing that discrimination (injustice) in hiring exists. A plaintiff alleging discrimination may show 1) that a law, on its face, discriminates against a protected class or that 2) a law has a disparate impact on a protected class. In interpreting Title VII, the Courts recognized that injustice is not always overt. By focusing on the effect of a law, the court need not worry about the intentions of the participants within the system. A showing that certain groups are disadvantaged in effect is enough to shift the burden to the employer to explain why such is the case.

Courts likewise must recognize that in meting out judgment, especially within the criminal justice system, certain groups are disadvantaged due to sexism, racism, lack of financial resources, and a host of other reasons. In recognizing the disadvantage, the Courts will then be in a better position to give consideration to the disadvantaged to nullify its effects within courts of law.

This study clearly shows that the promise of justice for all (or the perception) is not being realized especially when perception of justice is examined amongst the various races. The results of this study show the need for a more thorough examination of the reasons for this apparent divide.

**Appendix
Background Information**

1. Sex: 1. _____ Male 2. _____ Female

_____ 2. Classification:

- a. 1. _____ Judge
- b. 2. _____ Lawyer
- c. 3. _____ Law Student

_____ 3. Martial Status:

- a. 1. _____ Single
- b. 2. _____ Married
- c. 3. _____ Divorced
- d. 4. _____ Widowed
- e. 5. _____ Separated

_____ 4. Age: _____

_____ 5. Religion:

- a. 1. _____ Catholic
- b. 2. _____ Jewish
- c. 3. _____ Protestant
- d. 4. _____ Other (specify) _____

_____ 6. Political Preference:

- a. 1. _____ Democrat
- b. 2. _____ Republican
- c. 3. _____ Independent
- d. 4. _____ Other (specify) _____

_____ 7. Income:

- a. 1. _____ less Than \$10000 per year
- b. 2. _____ \$10000 to \$19999 per year
- c. 3. _____ \$20000 to \$24999 per year
- d. 4. _____ \$25000 to \$29999 per year
- e. 5. _____ \$30000 to \$39999 per year
- f. 6. _____ \$40000 to \$49999 per year
- g. 7. _____ \$50000 to \$59999 per year
- h. 8. _____ \$60000 and above

8. Race: 1. _____ African American 2. _____ Anglo 3. _____ Hispanic

Interpreting the Law

In this section you are asked to respond to a series of statements related to interpreting the law. Please read each statement carefully and indicate the appropriate response.

Section I

9. _____ The best interpretation of the written law is to seek the intent of the lawgiver.
10. _____ The best interpretation of the law is to seek a qualified lawyer's opinion.
11. _____ The best interpretation of the law is to apply its literal meaning.
12. _____ The best interpretation of the law is that which agrees with the opinion of the most people.
13. _____ The best interpretation of the law is that which comes through mediation.
14. _____ the best interpretation of the law is to sometimes seek the intent of the lawgiver but most times allow the law to stand as written.
-

Degrees of Justice

Section II

Here are a number of statements about which most lawyers have strong opinions. You are to indicate how you feel about them. Try to rate each statement the way you really feel about it.

- | | |
|------------------------|---------------------------|
| 7. I agree very much | 4. I disagree a little |
| 8. I agree pretty much | 5. I disagree pretty much |
| 9. I agree a little | 6. I disagree very much |

15. _____ Judges in the U. S., as a general rule, judge each defendant based on the merits of the case.
16. _____ Judges in the U. S. are more likely to show favor when judging a case which indirectly involves a close friend than someone they do not know.
17. _____ Judges in the U. S. are more likely to show favor when judging a case which indirectly involves a relative's financial status than someone they do not know.

18. _____ Judges in the U. S. are more likely to throw the book at a disagreeable defendant.

19. _____ Judges in the U. S. are more likely to show some favor in sentencing defendants whose lifestyles are like their own.

20. _____ Judges in the U. S. are likely to show some favor in sentencing defendants who are lodge brothers or sisters.

21. _____ Judges in the u. S. are likely to show some favor in sentencing a well-mannered defendant.

22. _____ Judges in the U. S. are likely to show some favor in sentencing a well-known defendant.

23. _____ Judges in the U. S. are not likely to show favor in sentencing a well-known crack cocaine dealer.

24. _____ Judges in the U. S. are not likely to show favor in sentencing someone who is a social deviant.

25. _____ Judges in the U. S. are not likely to show favor in sentencing someone who is gay.

26. _____ Judges in the U. S. are not likely to show favor in sentencing someone who is destitute.

Section III

In this section you are asked to respond to a series of statements related to your beliefs. Please read each statement carefully and indicate the appropriate response. Be as honest as you can in answering. Answer yes or no.

27. _____ The American justice system generally seeks justice for all.

28. _____ The American justice system is generally free from bribes.

29. _____ The American justice system is generally free from oppressive behavior.

30. _____ Officials in the justice system generally refrain from satisfying their ego's needs in dispensing justice.
31. _____ The American justice system is generally open to change.
32. _____ The Founding Fathers of the U. S. were men of outstanding character.
33. _____ The Founding Fathers of the U. S. were average men insofar as morals are concerned.
34. _____ The Founding Fathers of the U. S. established the U.S. on Christian values.
35. _____ The Founding Fathers of the U. S. were good examples of men who believed in liberty and Justice for all U.S. citizens.
36. Which branch of government dominates public policy in the U. S.?
 _____ Courts _____ Congress _____ Executive
37. In interpreting the Constitution, officials should be guided by: _____ well-established judicial traditions _____ a free spirit _____ radical views.
38. The administration of justice in the U.S. is best described as:
 _____ fair _____ mostly fair _____ Unfair
39. I lean more toward laws being interpreted with a: _____ liberal view -
 _____ centrist view _____ conservative view
40. Judges are likely to show favor in sentencing _____ a defendant of the same party _____ one of a different party _____ one of no political party.

Section IV

In this section you are asked to respond to questions arising from a discussion of the movie, "*A Time To Kill*." Even if you have not seen the movie, the statements are general enough for you to answer. Please be honest in answering.

41. Justice cannot be blind, but must be seen with the clarity of spiritual eyes. For example, the young lawyer in the movie, "*A Time to Kill*," called upon the jury to see with their hearts and not with their natural eyes. _____ Yes _____ No.
42. The symbol, blind justice, must be given sight, so that she is able to see the injustices within the justice system. _____ Yes _____ No.

Part 2
Administration of Justice – A Polemic
Chapter 1

Two men were talking about the news not too long ago. One said, "It's a shame that people have so little regard for the rights of others." He had seen a young person take an older person's purse and run away before the police could be summoned. Listening to the man, the second person said, "Things are no better nor worse than they were a hundred years ago." He went on to say, "People get upset about crime but society has always had its share of deviants." The first person did not disagree, but he did say that crimes seem to be committed by younger and younger offenders. He wondered what would happen to mankind if the trend continue.

There is no question but that people are concerned about crime. In the late 1990s, the mayor of Miami-Dade County, Florida, instituted an "Operation Safe Streets Clean Sweep" campaign. What follows is an account of the operation. The intent is to use the campaign as a case study to show how culturally diverse people perceive matters differently.

Additional police were added to the shifts in order to beef up police presence in high-crime areas and to make an impact on the crime problem. One effort of the "Safe Streets" campaign netted a number of young black men accused of loitering in the parking lot of a bowling alley. The news account of the first few days of the campaign painted the effort in glowing terms; but the rounding up of the young black men incensed some members of the black community. The issue sparked a demonstration by thousands of African Americans to show their disapproval of the "Safe Streets" campaign and their

lack of political power in the city of Miami. What seemed a good program for all citizens became a lightning rod for protest among 20% of the population. The problem was that the black community perceived the “Safe Streets” program as targeting young African American men.

The Miami-Dade mayor was faced with a dilemma. He knew many people in the Hispanic and Anglo communities approved of his “Operation Safe Streets Clean Sweep” effort. Yet he was also aware that African Americans were against the campaign. Not that African Americans were against safe streets; to the contrary, they wanted the focus of the campaign to target serious crimes, not young African American men who were charged with loitering. In the eyes of some policemen, the gathering of a relatively large number of African American young people spelled trouble. They felt justified in apprehending what they perceived to be criminal offenders. They also knew, as did the mayor of Miami-Dade County, that arresting African American young men was good politics.

What the police saw as criminal offenders, the African-American community saw as its children. Like parents everywhere, they did not want their children to undergo harsh treatment by the police. What should the mayor do? If he continued to focus his “Safe Streets” campaign on young African-American men, he would surely stir up more anger in that community. If, on the other hand, he focused on more serious crimes, the campaign was likely to be much less successful. The mayor was aware of the results of an opinion poll by Gonzalez and Greer Research Associates and the National Opinion Research Services. The survey revealed an overwhelming support from Cuban Americans with nearly an equal percentage of African Americans giving him low marks.

The Herald (1, 1 B) reported, "Nearly 80% of Cuban Americans approved of Penelas, compared with less than 30 percent of blacks. And blacks were twice as likely as white non-Hispanics to give Penelas (mayor) a negative evaluation." If the weight of numbers guides behavior, it can be argued that politically the mayor was doing the right thing. If fairness to all citizens is the measure, then the mayor's campaign was lacking.

To be sure, Cuban Americans and Anglos in Miami, Florida, do not have a lock on a desire for crime reduction. African Americans are both perpetrators of crimes and the most likely victims of crimes by African Americans. Blacks also want a reduction in crime but not at the expense of losing a generation of young black males to the criminal justice system. In cold, hard terms, African Americans have been so victimized by the criminal justice system that there is a lack of trust in officials, even when they appear to mean the African-American community well.

Herein lies the problem. The U. S. society speaks of "liberty and justice for all," but to the average African American, the words ring hollow. To the average Anglo American, however, liberty and justice are the warp and woof of society. This chapter is not on liberty but rather on justice - more specifically, this chapter deals with the administration or management of justice.

Managing Justice

Management is an art. It is the act of managing. The manager controls, directs, guides and conducts. Control has to do with power, authority, command and dominion. To manage also carries the meaning of direction. Like the bearing points on a compass, management set the course for all to follow. Guidance is another aspect of management.

It speaks to leadership, supervision, and instruction. The end result of management is performance, making it the sum total of what goes into management.

Justice denotes, on the other hand, fairness. In the best and highest sense of the word, it means moral or absolute rightness. Absolute rightness does not compromise that which is right. The just one is honest and impartial in his dealings. Honesty deals in truth. One never finds deception in honesty. The impartial person calls an ace an ace and a spade a spade. Justice does not see the race, color, religion or creed of people. True justice is a shining light in an otherwise dark and dismal world.

It is in the area of control that injustices are found. When unjust people are appointed to manage the affairs of others, harsh actions follows. When managers are crooked, their direction leads to mismanagement. When leadership is morally corrupt, chaos follows. If harsh action, mismanagement, and chaos characterize management, the bottom line is oppression. An oppressive system is anything but a just system.

An important question to be asked is whether the American system of justice has been, and is today, managed by just or unjust people? If just people have managed the justice system, one expects to find fair treatment of the people without regard to their race, color, religion or creed. If, on the other hand, unjust people have managed the justice system, the bottom line is expected to be oppressive behavior. As it is in viewing the justice system via the past, the same holds true in looking at it in contemporary America. Justice is a constant; there is no variability.

Colonial American Justice vs. Contemporary Justice

In Colonial America, communities were small and homogeneous. They were not faced with cyberspace technological problems and the moral questions pertaining to its use, nor were they faced with what the community standard should be on doctor-assisted suicide or abortions on demand, nor what should be the ethical standard governing the cloning of animals and humans and a host of other 21st century social and ethical issues. The people of colonial America had no conception of the notion of having large bureaucracies carrying out the people's business. While there were no large bureaucracies, the colonists did maintain law and order. Informal sanctions coupled with pressure from the community brought the average citizen's errant behavior around.

Walker (2) published a book on Colonial American criminal justice. The administration of justice during the colonial period resembled our current system. The system lacked efficiency in dealing with crime, and the lack of uniform standards led to a high degree of informal decision-making in the criminal process. The colonial criminal codes were very harsh, but the colonists were ingenious in inventing ways to mitigate punishment and evade the intent of the laws. The social problems of today were yesterday's social problems also. Drinking, gambling, prostitution, robbery, and lawlessness could be found in all colonial cities. Walker shows that the problem did not exist just in urban areas but in some rural counties; law enforcement was nonexistent. Cities were wracked by periodic riots; and, as the New York tenants' riot of 1766 suggests, mob violence existed as well.

In today's society, many people blame urban problems on immigrants, minority group members or overcrowded conditions. It seems that blame is placed on anyone but themselves. In Colonial America, among the homogeneous population, immigrants and

minorities could not be blamed for the problems the people faced. Yet there existed in Colonial America the maladies of urban areas today, albeit to a lesser degree. To be sure, deviant behavior was present in the 1600s just as it is in the 21st century. With deviant behavior comes a sanctioning system. The criminal justice system is that sanctioning system. How the officials of the criminal justice system manage is the question being addressed. Two important officials in the justice system are juries and judges. How did these perform their jobs in Colonial America?

Juries

Juries in Colonial America exercised great freedom in reaching verdicts. They ruled on the appropriateness of the law as well as the facts of the case. They were citizens of their day, carrying out their citizenship duty, much like men and women today. Like juries today, they also showed remarkable innovative ability in rendering verdicts. When it suited them, juries could be very merciful. For example, when defendants were charged with a felony, say grand larceny, juries arbitrarily lowered the estimated value of stolen goods and thus found the party guilty of petty larceny. They also engaged in jury nullification; and no less a public figure than Thomas Jefferson defended the jury's right to invoke community sentiment, particularly when it related to blocking royal attempts to prosecute rebel leaders. The practice of jury nullification is rooted in English law.

Juries Sometimes Nullify

In 1554, Sir Nicholas Throckmorton²⁶ was acquitted by a London jury on charges of high treason in Wyatt's rebellion. Wyatt was the leader of a popular Protestant uprising against "Bloody Mary," the hated Catholic Queen of England who desired to

²⁶ See also *The Trial of Nicholas Throckmorton* .

return England to Rome's ambit. Four of the jurors later recanted their verdict, but eight were punished with imprisonment for rendering a verdict contrary to the facts as stated in the case.

William Penn's and William Mead's trial for disturbing the peace by holding an unlawful assembly is a second case of jury nullification. Though they had preached to several hundred fellow Quakers in a public street, a jury acquitted despite undisputed evidence to the contrary. At trial, the court directed the jury to find the two men guilty for disturbing the peace given the large number of persons who had assembled. They, however, refused to convict. Even when the judge threatened the jury and gave them two days of imprisonment without food, drink, or heat, the jurors still acquitted Penn and Mead. The harsh treatment of the judge did not end. Following the acquittal, the jurors were imprisoned once more. This time the judge held them on a writ of attain, until they paid a heavy fine. When four of the jurors refused, the judge locked them up for months in jail until one of them obtained a writ of habeas corpus from the Court of Common Plea.²⁷

Compare these trials to the contemporary jury verdict in the O. J. Simpson criminal trial. The authorities and most whites openly criticized the jury for acquitting Simpson. The jury's action was a work of nullification; and, like the two cases above, the jury was persecuted.

Jurors As Quasi Witnesses

Jurors have historically ignored the court's direction when they felt a higher calling to render justice as they saw it. In Medieval times, jurors were seen as quasi witnesses. They judged the cases before them based on their knowledge of the case not

²⁷ <http://www.chrononhotonthologos.com/lawnotes/penntrial.htm>

the facts as presented in today's courtrooms by prosecuting and defense attorneys. On appeal, some judges' decisions have been overturned and serve as benchmark rulings. Such was the case in the Bushel's appeal. Bushel and other jurors in London "were fin'd and imprison'd at the sessions in the Old Bailey, because they gave their verdict against full evidence and the direction of the Court in matter of law, and so acquitted the prisoners".²⁸

The clear implication is that the jurors knew more about the case than the judge and as such acted as they did. If this standard had been applied in the O. J. Simpson case, the telling results could have been that white America might have understood that O. J.'s peers knew more about the abuses of police power than they. As such, the defense's claim of a police frame-up could possibly have been more believable.

The Bushel's case was certainly used by lawyers in Colonial America to justify jurors' verdicts that ran contrary to the evidence. A case in point is the John Peter Zenger 1735 libel trial. While this trial was about "freedom of the press," it brought out the nullifying work of jurors.²⁹ To be sure, jury nullification had been used for years to frustrate prosecutions brought under the navigation acts. The navigation acts demanded all intercolonial trade to pass through the mother island until Parliament blunted the colonists' effort by providing for special admiralty jurisdiction.

Alexander Hamilton was Zenger's lawyer. While Hamilton was not permitted to present evidence that the newspaper article was true, he was able to call upon the jury "as witnesses to the truth of the facts." His words showed that jurors, being the defendant's

²⁸ A case of Jury nullification-<http://web2.uvcs.uvic.ca/courses/lawdemo/DOCS/BUSHEL.HTM>

²⁹ Bushel's case used to justify jurors' verdicts-<http://www.historybuff.com/library/refzenger.html>

peers, knew more about the case than did others and were called upon to be quasi-witnesses to the truth.

If people are chosen to be jurors because they are peers of the defendant, it seems logical that they would be the ones most knowledgeable about the case. Taken a step further, it seems illogical to not use the persons who can "witness to the truth" to do so. Yet this is exactly what the current system of justice does. Jurors are to render their verdicts based on the evidence presented in the trial, however flawed the evidence may be. In such situations, is justice lost?

Judges

In Colonial times, judges ruled over the courts much like they do today. One major difference, however, is the arbitrary manner by which judges went about pronouncing sentences. One person found guilty of a felony might receive a long jail sentence, while another guilty of the same crime, under the same circumstances, might receive a warning. The arbitrary and individualized form of justice was more the rule than the exception. Sometimes criminals were given penalties not even prescribed by law. The fact of the matter is that justice in the United States today is a mirror of Colonial American justice.

This is especially true in the administration of criminal justice with respect to "routine" or "ordinary" crimes. In Colonial justice clearance rates were low, large numbers of cases were dismissed, and convicted offenders frequently received lighter penalties than prescribed by law. The same holds true today with the possible exception of convicted offenders receiving lighter penalties than prescribed by law due to more uniform sentencing standards. What is true is that officials exercised enormous

discretion, and the net result was an inconsistent and often unjust use of the criminal process.

No doubt Marvin Frankel said: "Deja vu all over again" when he saw the sentencing practices of judges in the 1970s. Frankel did not like the unjust manner some judges used in sentencing defendants. Indeterminate sentencing was the problem. There were no hard and fast guidelines in place to guide judges in imposing sentences. Frankel's disgust with the enormous discretion of court officials in sentencing practices led him to call for a sentencing commission. Two decades later, Michael Tonry (5) sharply criticized the U. S. Sentencing Commission guidelines for federal offenses stemming from Frankel's work.

Tonry objected to the guidelines rigidity. He thought them to be too harsh. Moreover, he felt judges and lawyers had to choose between imposing sentences that are widely perceived as unjust. If not that, they were sought to achieve just results by means of hypocritical circumvention. Judges were put in a "Catch 22," having to choose between their obligation to do justice and their obligation to enforce the law. Seeking to improve upon the guidelines, Tonry set forth eight points he termed "a just sentencing system." All eight points are listed below:

- 1) Legislatures should repeal all mandatory minimum penalty statutes.
- 2) Legislatures should create and fund credible, well-managed, non-custodial penalties.

- 3) Every jurisdiction should charter a permanent sentencing agency, usually called a sentencing commission.
- 4) The Commission should draft sentencing rules, usually called "sentencing guidelines," and monitor their application.
- 5) The sentencing commission should ensure that aggregate sentences imposed can be accommodated by existing or funded correctional resources.
- 6) The sentencing guidelines for custodial penalties should set maximum presumptive terms of confinement for all cases and minimum terms for the most serious crimes.
- 7) The sentencing guidelines should apply to prison and non-prison sanctions.
- 8) Legislatures and commissions should instruct judges to impose the least punitive and intrusive appropriate sentence. (6).

Today, the hot sentencing issue has to do with cocaine. Present sentencing guidelines call for a much stiffer sentence for users of crack cocaine than users of powder cocaine. The sentence for trafficking in five grams of crack cocaine, more potent and dangerous form of the drug, carries a mandatory five-year minimum prison term. To receive a five-year minimum prison sentence for use of powder cocaine, an offender must have not five grams, but 500 grams. The apparent inequity in sentencing is made worse due to perceived racial bias in sentencing. The greatest number of offenders using crack cocaine happen to be of African decent or Hispanic origin while Anglos comprise the greatest number of offenders of powder cocaine. It looks to many African Americans that the government panders to white cocaine users while dealing more harshly with black ones.

Recently, the U.S. Sentencing Commission recommended changing the sentencing guidelines to bring powder cocaine offenses more in line with crack cocaine offenses. The Congressional Black Caucus repeatedly has urged eliminating the disparity in penalties. Black leaders believe heavy penalties for tiny amounts of crack strike black offenders unfairly, especially since powder cocaine is more common among white users. If the new guidelines were enacted, they would reduce the sentence for possession of crack cocaine to that which is now in effect for powder cocaine, which is no more than one year in prison.

It becomes apparent that present-day justice is not much removed from Colonial justice. Guidelines and sentencing commissions have not been able to make unjust judges just. Moreover, politics still plays an important role in decisions made by judges. To address injustices in the criminal justice system, much is made of the need for judicial independence. What is judicial independence? Can it, of itself, do away with injustices found in the justice system?

Judicial Independence

Judicial independence simply stated refers to judges being free from undue outside pressures in rendering court decisions. Forums are held to address this issue in many quarters. The very discussion reveals a somewhat anemic justice system. The conventional wisdom holds that judges are fair in their decisions at the highest levels of the courts with descending fairness as one reaches the low-level courts. The conventional wisdom also raises concern over state judges having to run for election and the high costs associated with campaigns. Elected judgeships are seen as being ripe for corruption.

While appointed judgeships are generally for life, they are not directly accountable to the people.

The 1996 Judicature Society annual meeting discussed judicial independence, and it is printed in the September/October 1996 issue in *Judicature* (7). Erwin Chemerinsky, Legion Lex Professor, University of Southern California Law Center served as moderator. A host of well-known lawyers, judges and professors added their voices to the judicial independence debate. The researchers have liberally taken from the report, adding comments in doing so.

Chemerinsky-

"... never in recent memory has there been more discussion about judicial independence than in the last year. Senator Orrin Hatch and then Senator Bob Dole, on an almost daily basis, gave speeches criticizing particular judges in their rulings. All of this especially came to public attention when U. S. District Judge Harold Baer granted a suppression motion based on the Fourth Amendment and threw out evidence of more than 80 pounds of drugs. At that point, the White House said that if the judge did not reverse his ruling, he should perhaps resign. Senator Dole went even further. He said that if the judge didn't resign, he should be impeached."

It should be noted that the law requires judges to rule independently. In the above statement by Chemerinsky, pressure from the highest level of government to control the opinion of a given judge is evident. If the Executive and Legislative branches can bully

the courts into rendering "politically correct" decisions, does not fairness lose out and fear control the decisions of judges? Kenneth C. Jenne's comments on Chemerinsky's statement seem to say as much.

Jenne said:

As a litigator, and also as a legislator, I want to make sure that when one of my constituents, or I, appear before a judge, the judge is going to be able to rule without having any influence other than what is before him or her. As an example, when I was a young prosecutor more than 20 years ago, I tried a case down in Key West (Florida). At the conclusion of the trial the judge reminded me that this was Key West and the rules were different when it came to sentencing. Basically, there was so much influence on this particular type of trial that he was afraid to sentence someone to prison.

Fear is a weapon of control. When fear is used to control judges, does it not poison the justice system? Don't people lose faith in the justice system and the rule of law becomes threatened? Added to fear is the political and partisan pressures brought to bear on judges by people in positions of high authority. Again attention is called to the words of the President of the United States and the leader of the United States Senate regarding Judge Baer's decision in a case before him. Without going into the details of the case, clearly this judge could not do his job void of fear and pressure to conform to the political correctness of the day.

As potent as fear and pressure to conform are, they are not the only maladies of the justice system. Ambition may be just as potent in influencing judges' decisions. For example, it is not inconceivable that a judge in line to be appointed to the Supreme Court, a life-long dream, would think twice about ruling in a way to deny his or her appointment. Kenneth O. Simon makes this point when he said: "And they (judges) can be influenced, I think at any level, by their own ambitions. If you're a trial judge and you want to move up to an appellate level, naturally you want to position yourself in a way that you can get the most support." Ambition is not bad of itself, but when it blinds aspiring judges to ethical and moral considerations in rendering judicial decisions, it certainly is.

Added to the mix of fear, political and partisan pressures and ambition is the malady of economics. In many cases, state judges have to run for office. This puts them in a political race. Elections have become very expensive. The need for finance coupled with ambition is too real a threat to judicial independence. Kenneth O. Simon relates finance to political pressure saying:

When it come to money in politics and electing judges, I think the real threat is a judge being influenced by the litigant's capacity to mobilize opposition. If it's perceived that a particular litigant has the capacity to get the neighbors all riled up, and if you make a decision that's unpopular, say in a zoning case, or, for example, if you make a decision to cut what you believe is an excessive award of punitive damages, you might then get the trial lawyers mobilized against you. If you fail to cut it, you have the business

community up in arms. So the real issue for a judge is not individual contributions, but the capacity of litigants and others who have an interest in the system to mobilize against or in support of the judge.

Race is associated with economics and cannot be ruled out as a factor in judicial independence. The absence of members of minority groups serving as judges is a cause celebre. Many people say that judges are colorblind. Others feel judges to be blinded by color. The argument for judges being colorblind presents judges as fair-minded men and women, where the color of the judge does not matter. What is important is that the judge renders each decision in an unbiased manner. The flip side of the argument is that the history of judges has proven them to be anything but unbiased when dealing with minorities. This voice argues that the minority group members suffer disproportionately in prison at the hand of so-called unbiased judges.

The fact of the matter is that minority group members are underrepresented as judges. One of the reasons has to do with money. In Miami-Dade County, Florida, for example, it takes roughly \$150,000 to mount a successful campaign to become a county judge. It is nearly impossible for a black candidate to win a judgeship in a county where their number is close to 20% of the population. As a consequence, of the more than 100 County Court judges in Miami-Dade County, only six are black. The reasons for the small number of black judges are many. Among them being the average African American lawyer is not known by the large law firm community and doesn't have access to the that pool of wealth to run and be elected.

We have highlighted four potent influences to judicial independence: fear, political and partisan pressure, ambition, and finally, money compounded by race. These influences, like the points on a compass, cover east, west, north and south. The omnipresence of these influences reveals judges to be human beings who will act and react to the sentiments of the people wherever they are. To make such an admission, however, is to also agree that the *Lady Called Justice* is not well.

Socialized To See

Before judging the judges, stop and think what your decision would be if your job depended on your response. Would you work yourself out of a job or would you accommodate to save your job? This is a real dilemma not only for judges, but for people in highly sensitive management jobs as well as the average factory worker.

The matter may be more sensitive with judges because the public tends to hold judges in high regard. Nevertheless, judges sometimes find themselves between a rock and a hard place when it comes to rendering decisions. Say for example, Judge "A" has a case before him, which indirectly impacts the financial status of a distant family member.

Let's say the family member stands to lose a large sum of money if the judge rules in favor of a local cable company merging with a large communications conglomerate.

Would the financial ruin of his family member influence this decision? What if a judge could save a friend from social embarrassment in a civil case by ruling a certain way?

Would he save his friend? Would you?

Is there anyone so naive to believe that political and economic determinants have no place in judges' decisions? If so, that person might also say, the chairman of the board

of one of the largest 500 corporations would let his company face ruin rather than lie to the public about one of its harmful products. To the enlighten readers of this work, however, nary a moment's thought need go into his response. Anyone who does not know that judges' decisions are sometimes influenced by political, economic as well as social determinants must have his/her head in the sand.

Why judges, who are sworn to up hold the law, are biased in their decisions is related to social factors. An example is helpful. What if everybody in the immediate family of the person who feels judges are free from external influences in rendering decisions, believed the same way? Suppose his/her friends feel this way also. Within that one's environment, an illusion of truth prevails, but to the person there is no illusion, only truth. It's easy for people who are around others who feel more or less like they do about matters to believe that most other people feel the same way.

One of the writers of this piece recalls his early days as a doctoral student when just about everybody he met seemed to be enlightened about the plight of the urban poor. The researcher's circle of fellow students was from liberal backgrounds and most knew families that were poor. Because so many of the researcher's in-group desired to help the poor, it seemed like there was a general good will in the nation for the cause of the poor. As the researcher expanded his circle of acquaintances to include professors and students from more conservative backgrounds, an amazing thing happened; the researcher saw, for the first time, that not everyone harbored good feeling toward urban America. Indeed some professors and students held the urban poor responsible for their plight and saw no good to come out of spending large sums of money to rehabilitate urban America.

Equally so, some people, among them judges, feel that judges are generally unbiased in rendering decisions on court cases. They have been taught to believe the justice system is fair. On the other hand, others feel judges are the products of their environments and cannot escape the general biases of their family and friends when rendering court decisions. Many of these people have felt the weight of an unjust justice system. As people are taught to see what they see, managing the justice system requires ethical and moral instruction, which transcends ethnic and racial biases.

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Chapter 2

How Money Rules Justice

We begin this polemic with two words: "GOLDEN RULE." There are two thoughts I wish to convey in citing these words. One thought holds to the maxim its utility is found in the proverb as a philosophy of life. The second thought pertains to what the words, "Golden Rule," imply. These two thoughts may be called "school of thoughts." The same words "Golden Rule" are used in discourse but have widely different meanings. The first school of thought, for example, approaches the "Golden Rule" in an ethical sense. It holds the maxim to be the highest statement of civility. The second school of thought involves human relationships where the interest is not civility, but, rather, the interest is the "gold." These two thoughts at first glance may appear to be mutually exclusive, but; in a practical sense, they are not. Rather, together they at once give direction to civil living and the difficulty in living by the "Golden Rule."

The maxim reads: "Do unto others as you would they do to you." The meaning is if one wants to be treated with respect, one must respect others. If one wants people to honor one, one must first honor them. If one does not wish to be abused, one must not abuse. The words, "Golden Rule," as a revelation of a well-known fact of life mean the ones with the gold, rule. In this sense people are under the control of those with money. Money is seen as a way to have the last say in a matter. Money, in other words, buys the ability to rule. How are the two "schools of thoughts" related? It is to this question that we shall now turn.

If each sane person were to relate to others in the manner they wanted to be related to, society would no doubt have an edge up on anti-social behavior. It is a sad state of affairs in today's society because people who want to be treated fairly do not always treat others fairly. For example, the mob controls many illegal actions in communities. At the top of the heap is "the boss." Let's say he is big on extorting money from neighborhood businesses, offering them protection in return. What does "the boss" look for when he recruits workers to carry out this task. Does he seek men and women whom he feels will steal from the organization, or does he want people who are trustworthy. He wants people who will do what they are told and are perfectly honest in their dealings with the mob. Those who cross him are likely to face extreme sanctions as an example for others. In other words, though he steals from others, he does not want the same thing to happen to him. The mob boss, therefore, places demands upon those under him to honor the Golden Rule as a maxim, while he says: "I have the gold, and therefore, I rule."

Men motivated by greed control the mob. They want money at any cost. Their vicious methods make them successful in their business dealings. Sometimes they have influence over those who mete out justice. In some countries, mob bosses influence appointments to judgeships or indirectly control decisions judges render in cases pertaining to their business dealings. Either way, judges are "in their pocket." Less sinister, but nonetheless unjust, is the justice system where people with money can buy justice. The United States' system of justice is not exempt from this sickness.

There is a paradox. The paradigm upon which the United States justice system is built up holds the "Golden Rule" maxim, but what follows in practice too often is akin to

the adage, "He who has the gold, rules." Someone has said, "Money rules justice." At each step in the justice system, from arrest to sentencing, people with money fair better than those without. How can this be, seeing how a large portion of lawyers and judges come to their professions believing in the golden rule as a maxim.

Many follow the greedy pattern of men and women who head up large corporate, civil, religious and governmental organizations. At some point in their lives, they make a decision that they want power over others. When this occurs, their view of the "golden rule" shifts from embracing the maxim to embracing a method to obtain "the gold." The difference between mobsters, lawyers and judges is that mobsters don't hide their greed. Everyone knows that the mob is out for money. On the other hand, some practicing lawyers and judges know that justice can be bought but, like those controlled by mobsters, keep silence before the public. They pretend to serve the good of the community, but, truly, only want control over the lives of others, and they know money is the way to control. Unlike mob bosses, however, many lawyers and judges are respected members of their communities and are held in great esteem by their colleagues. They become possible prey for mobsters or officials influenced by political action committees.

Political Action Committees

In a democratic society, citizens choose their representatives. They often have choices among political parties ranging in views from the right to the left. To elect a person to represent the people, however, is not always given due care. In this, political elections and the selection of apples have something in common - both require inspection

and each comes with a cost. Consider the person who hurriedly picked apples for a pie. When he/she got home, what he/she thought were good apples turn out to be bad ones. From the view of the public, the apples in the top of the barrel looked good but the underside, hidden from public view, was rotten to the core. The seller knew the buying habits of the public so he polished up the bad apples that were in the bottom of the barrel and placed them conspicuously at the top. It was but a matter of time before a sucker came along.

When inspecting a product, care must be given. Inspections limited to the eyes alone open the door to deception. In a recent election, voters picked a candidate for high office from the "top of the barrel." They were sure their choice was a good one because his background was similar to theirs and he "spoke their language." To the public, the candidate was without blemish. Once elected, the truth came out about his past. He had been involved in a kickback scheme for several years where he received large sums of money for favors he rendered to a certain business with mob ties. The business made millions on government contracts. A candidate who was thought to be good turned out to be anything but.

In "popular" democracy, it is a good concept for citizens to participate in the exercise of government, but less than good people can turn it into "special interest" democracy, where those with money control the process. Political action committees (PACs) are special interest groups looking to influence policymakers in the direction of their narrow interests. They influence the political process by the number of votes they deliver and by heaping sums of money into the coffers of political parties. To be sure,

PACs are not Boy Scouts doing good to earn merit badges. Those who fund the politicians either openly or covertly demand favors in return.

PACs are elite groups whose influence can be felt at the federal level in presidential and congressional elections as well as at the state level in just about all elections. They know that politicians need votes to get elected, and money buys votes. They also know that once elected, politicians tend to seek reelection. While incumbency gives a candidate an edge, without money to oil the political machine, another will take his/her place. Consequently, politicians enter politics knowing PACs are a viable source for reelection campaign support, especially when they must run every two years. The PACs use leverage to bring about legislation, or, in the case of judges, decisions favorable to their cause. They effectively purchase favor. In "special interest" democracy, the highest bidder walks away a winner.

The fact of the matter is that political action committees make it more expensive to run for political office. They do this by hiring high-priced Madison Avenue marketing firms to develop expensive and effective television advertisements favoring the candidate of their choice. This puts pressure on the opposing candidates to match their work. Sometimes political parties are in a position to aid their candidates with the costs, but, many times, candidates are left with the responsibility of raising funds to match the PACs' advertising campaigns. Where do the candidates go for money? If they want to win, they go where money can be found. Sad to say, money for elections can more readily be found in self interest groups' coffers than in altruistic groups' coffers.

To whom are the self-interest groups or PACs accountable? They do not have to face voters in elections. They are not accountable to donors in a strict sense. They are

not made to come before congressional committees or state legislative committees for funding.

Larry Sabato's *PAC POWER: Inside the World of Political Action Committees* (1) focuses on the phenomenal growth of PACs and their influence on American elections. According to Sabato, corporate PACs can hardly be considered showcases of democracy. In some PACs, Sabato says that the chief executive officers completely rule, and, in many others, they have an inordinate amount of influence on PAC decisions.

PACs Shift Focus to States

A recent trend in government is to shift former federal programs to the state level. At first glance, this trend seems to be a good idea. By shifting federal functions to the states, big government is reduced and state government, closer to the people, takes on a larger role. The downside is that federal dollars do not automatically shift to the states at the required level to manage the programs. This puts a squeeze on the already tight state budgets. As functions shift, regulatory control also shifts. Policy decisions once made at the federal level now become the domain of the states. PACs also shift their focus from the federal level to the state level. For example, welfare has been historically a large federal program. Today, states have a greater role to play in welfare. PACs, who lobbied Congress for decades, now find themselves in state houses. While there, they have taken note that many judges are elected to their positions. As state judges rule on administrative, civil and criminal matters, they have become targets of PACs.

Four important factors have led to greater PACs' interest in judicial elections: 1) The cost of financing campaigns for judgeships has risen sharply; 2) The need to

diversify the bench has encouraged more minority candidates to seek elected judgeships; 3) The shift in the South from a one political party to a two-party system; and 4) The shifting of federal responsibilities to the states.

Financing judicial campaigns is an issue currently under discussion by both legal and civil groups. They are seeking ways to finance judicial campaigns without upsetting the democratic process. Those closest to the system understand how public perception of justice can be shaken by a PAC scandal. Say, for example, a PAC with mob influence is able to swing the election of a state judge and that judge subsequently rules in its favor. Public trust in judges would suffer and the entire benches' honesty would be questioned. America needs its judges to be free from such pressure, but, sadly to say, PACs are marching on the double to aid judges with their political campaigns.

Anthony Champagne and Kyle Cheek (2) have studied PACs and judicial politics in Texas. Their article appeared in the July-August issue of *Judicature*. It calls attention to the symbiotic relationship between candidates for judicial office who help PACs raise funds and then become the recipients of funds from the same PACs to help finance their political campaigns. The seriousness of this matter is that PACs have become involved in judicial elections, even in races for the Texas Supreme Court. The writers state the obvious: the entanglement between candidates and PACs cannot help but have negative implications for notions of judicial objectivity and independence.

Many people feel that state judges should not be chosen by voters but rather that they should be appointed by the Governor and then face retention elections. Proponents of this plan argue that retention elections still keep judges accountable to

the voters. The downside of this plan is that judges still need funds in a retention election. In the mid- 1990s, a panel of judges was asked their opinion as to whether Supreme Court judges should be elected or appointed. The opinions of some of the judges were as follows:

- a. I feel that judges should not come to the Court by election, but rather by appointment coupled with an eventual retention vote.
- b. Elected but without partisan nomination - and without PAC money. Take politics out of consideration.
- c. Studies demonstrate that elected and appointed judges are of equal quality.
- d. Change the system. Remove big money lobbyists, PACS, partisan politics.
- e. Elected.
- f. I believe that the people should have the power to elect Supreme Court justices.

A glance at the responses shows a lack of agreement among the judges as to the "one best method" to reach the Supreme Court. While most respondents felt judges should be elected, one-third qualified their response by limiting PAC money. Why would two of the six respondents warn to steer clear of PAC funds. Better still, why is it that twice as many of the judges did not mention PAC funds as a problem. The writers have more questions than answers.

In the State of Michigan, the current system requires judges on the Supreme Court to be elected on a non-partisan basis for eight years. Political parties, however, nominate the candidates and their names are placed on general-election ballots void of party

affiliation. Reed (3) feels there is a need for change. David Barton argues just the opposite (<http://www.wallbuilders.com/resources/search/detail.php?ResourceID=6>).

Why would PACs be interested in who sits on the Texas Supreme Court? The same question might be asked of big tobacco in Florida. Why would they be interested in who serves on Florida's Supreme Court or any other state with law-suits pending against them. The answer is they want judges on the bench whose votes will serve their interests. The problem is the interests of big tobacco often run contrary to the public health concerns of the nation. So then, what are the consequences of PACs funds being used to elect Supreme Court justices? One consequence is an erosion of public trust. In Texas, for example, several Supreme Court justices faced a motion for recusal in a medical malpractice case in the mid-1990s because they appeared in a political action committee videotape endorsing the interest group's position.

In May of 1997, the chief justice of the Illinois Supreme Court was censured by the Illinois Courts Commission. Why? Because he attempted to duck traffic tickets. Clearly, the moral character of the judges in both cases is called into question. In the latter case, the judge showed little regard for the law he swore to uphold. What is to be said of this matter? The judge could have seen his error and determined in his heart that he would not be found in breach of the law again. If such is the case, he would no doubt become a better judge. What if he only gives lip service to being sorry for the breach of trust? The judge then would be a candidate to do unjustly in some other area. It could be that PAC money could influence him to rule in its favor.

Minorities are taking aim at judgeships as pressure is applied to state and local officials to bring more diversity to the bench. The potential for unsavory PACs to move in to fill the cash void is all too real. The once-solid South favoring the Democratic Party has begun to show a willingness to accommodate other political parties. The State of Florida, for example, presently has a majority of Republican lawmakers in both houses. Competition has never been keener for elected office. This environment is ripe for PACs. Some judges find themselves running on a party line in order to get elected. Can they be fair and partisan at the same time?

In summary, Political Action Committees make it more expensive to run for office. Their big money coffers afford them the luxury of advertising over TV as they know television is very effective in selling a product. Professional ad men and women have been known to sway public opinion based on the cleverness of their ads. To keep the political opposition from getting an advantage, when one party purchases expensive TV time for advertising their cause, others are compelled to match. Candidates looking for funds to match well-oiled political machines have been known to turn to PACs for assistance. This can lead to unsavory relationships between the candidates and interest groups who want them to champion their interests once elected.

Justice in Florida

Florida has a long history of electing judges. What has been Florida's experience? Florida became a state in 1845. In 1851, the Supreme Court was established as an independent tribunal. The Chief Justice and two Associate Justices were selected by the Legislature. In 1853, the justices were elected by popular vote. Appellate judges as well

as county judges have been elected by some method of popular vote to the present time. The method of selecting judges by election, however, has not been free of scandal.

The people of Florida have had a hand in electing all judges in Florida for most of Florida's history. The one exception occurred only when a vacancy occurred on a court between elections. Even then, the Governor appointed a replacement to serve only until the next election was held. Florida has also experienced many problems with its method of election of judges. Judges had to raise campaign money, which often was donated by the same attorneys who practiced before the Court. By the mid-1970s, the problem became even more serious after several Florida judges were charged with violations of ethics. Newsweek (5) wrote the following about Florida's judges:

Rumors about the court had been percolating through the Sunshine State for years, and one chief justice had already resigned shortly before being called to testify to a grand jury investigating gambling. Now his successor, James C. Adkins Jr., has been described as a reformed alcoholic who secretly pledged to leave the bench if he ever fell off the wagon. Two other justices have been accused of impropriety in deciding a utility tax case, and a fourth of peddling judicial favors. And the court's day-to-day operations have been shown up as amazingly lax.

In 1976, an amendment to the Constitution provided for initial appointment of all justices by the Governor from a list prepared by the Judicial Nominating Commission. After the initial term, justices had to submit to election by popular vote to see if they

should be retained. The elected system was revised in order to eliminate perceived and actual ethical problems caused by judges having to run for office in an election. The major problem driving the change was not the issue of judges needing to raise campaign money (it is a fact that they had to), but this did not cause the judges to err; rather, it was a lack of moral character that led to their wrongdoing.

The system was ripe for corruption. Lawyers were able to grease the campaign coffers of the very judges who tried their cases. Of course this was not the best situation for the judges to be in, but, other judges facing the same set of circumstances, overcame them and went on to serve honorably. The reason the judges were charged with ethics violations had to do with a lack of regard for what was good, right and proper. Men who had taken an oath to uphold the law found themselves involved in shady deals which compromised their ability to administer justice fairly.

A decade and a half after the judicial amendment to the Constitution, Miami witnessed Florida's most sweeping judicial corruption probe in its history. Four judges were indicted for corruption while another copped a plea. One of the corrupt judges claims to have had influence way beyond his court in fixing cases. County Judge Harvey Shenberg was one of the defendants in the Operation Court Broom indictments. He supposedly boasted that he could fix cases in 12 criminal courtrooms and 10 civil courtrooms in Miami-Dade County. His boasting to fix cases was not limited to municipal court in Miami-Dade County. He also claimed that he could buy favorable rulings from three or four judges on the Third District Court of Appeals and from two justices of the Florida Supreme Court (Natta Jr, 6).

Did former Judge Shenberg have the ability to do what he said? Shenberg could have been boasting far beyond his ability to perform. On the other hand, what if his boast was true? Consider the fact that he was sentenced to 12 years and 6 months in prison for receiving \$50,000 for disclosing the name of a confidential drug informant marked for murder.

Another of the judges was looked upon as a role model for the black community. Circuit Judge Phillip Davis, the first black elected to the bench in Miami-Dade County, disappointed many who had put their trust in him. Though he was eventually acquitted of the charges--the jury having felt he was entrapped--his career as a judge came to an end. This is the same man who had proudly spoken to a group of elementary school students about succeeding in life. It appears that he lived by the maxim: "Don't do as I do; do as I say."

Teachers looked up to the judge as a good example for their children to follow. They had every reason to because Davis was seen in the community as a good, honest and successful man. The outward appearance of Judge Davis and Judge Shenberg gave no clue as to what they were accused of doing until they got caught. Had they not gotten caught, they no doubt would have continued to be seen as a "role models." These two men and the other judges of Operation Court Broom were overtaken by a desire for easy money.³²

The Biblical saying, the love of money is the root of all evil, brings into sharp focus the influence money has over the lives of some who are sworn to uphold justice. The name of this chapter is "How Money Rules Justice." How does money rule justice?

³² See Website http://www.polkonline.com/stories/060400/sta_judge.shtml for a discussion of Operation Court Broom.

Money rules justice every time a criminal defendant is set free because he or she has the money to beat the rap; every time an official of the justice system takes a bribe; every time a rich person is given a lesser sentence than a poor person for the same offense; every time a judge rules in favor of those who “have” and not consider the implications of his or her act on the “have-nots.” Money rules justice whenever officials of the justice system cover-up the wrong doings of economically and politically powerful people.

Justice is an act of the heart where the just one does what is right without regard to race, religion, sex, creed or any other factors extraneous to the pending case. The just one is fearless and stands for what is right even in the midst of the multitude calling for compromise.

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Chapter 3 Justice That Sees

“A blind woman wandered about for over 200 years looking for someone to cure her blindness. Her sad state continued because all that would aid her became enslaved to her blindness.”

Justice in the U.S. is like the blind woman mentioned above, ever trapped in the blackness of darkness; she is too often in denial to her own injustices. She claims that "Justice" is blind to the color of one's skin, sex, religion, politics, etc. To the contrary, "Justice" only pretends that she cannot see those who stand before her. What is not generally known is that her blindfold is a two-way mirror; the outside side of the blindfold prevents the viewer from seeing her face, but her vision is not impaired. Her deceptive work is very convincing. Judges, lawyers, law students and the general public alike defend her because they are blind to her deceptive work. This chapter seeks to remove the blindness from their eyes that they might behold "Justice" for what it is in order to make it into what it should be.

Dueling to the End

Courtroom justice in the United States is a battle between two warring parties with one purpose - and that is to win. Winning is a zero-sum game, an adversarial process, where the winning party takes the glory, and the losing party is left to lick its wounds. One wonders whether dissatisfaction with the criminal justice system is a function of the adversarial process. The adversarial process may be compared to two men attempting to settle an argument by a duel. The two face off at high noon wearing their best suits with spectators watching from the sidelines. They mark off ten paces, and

then they turn and fire. The bullets find their marks. Both men lie dead in a pool of blood. Aliens looking down at a typical courtroom drama from the vantage point of their hovering flying craft would probably reach the conclusion that the adversarial process strikes a blow at justice as much as the two dueling parties struck a deadly blow to each other.

When J. Q. Public comes to court seeking justice, too often he/she sees both prosecutor and defense attorneys dealing loosely with the truth. As these two titans fire their salvos at the jury, J. Q. Public takes note that a third lawyer (judge) referees the match. J. Q. Public cannot but wonder what is wrong. He/she came to court believing that the principle objective of the criminal process was to find the truth. After all, a life long socialization process has taught him/her the truth is what the justice system seeks. His/her first experience with justice, however, leaves him cynical and disillusioned. He/she leaves the court wondering how people sworn to uphold truth, play so loosely with information and facts.

J. Q. Public has been taught to believe that justice is blind. Like the average person in America, he/she represents those who come to see the dualism of the justice system. Prior to an actual courtroom experience, J. Q. Public had an idealized sense of justice. He/she knew what his/her teachers had taught him/her about fair play and equal protection under the law. We may call this, a civic book's view of justice. After his/her experience with justice, he/she now knows that money makes some men and women more equal than others in court of law. Before his/her court experience, J. Q. Public held courtroom officials in the highest regards. To him/her they were men and women of the highest moral character whose very job in court is to seek truth. Afterward, in a state of

cynicism, he/she felt that all that matters are the facts and who can twist them to their advantage within the acceptable rules of law to convince the jury or judge.

The Rules of Evidence

Evidence in a court of law was not altogether what J. Q. Public thought it was. He never dreamt that rules of evidence vary depending on the jurisdiction, that what is considered to be evidence in a state court, for example, may or may not be admissible in say, a federal court. An Internet overview of this discussion has proved to be helpful.³³

Rules of evidence are, as the name indicates, the rules by which a court determines what evidence is admissible at trial. In the U.S., federal courts follow the Federal Rules of Evidence, while state courts generally follow their own rules. See, for example California's evidence rules, Indiana's evidence rules, or Washington's evidence rules. State rules of evidence are generally imposed by the state legislature upon the state courts.

In establishing what evidence is admissible, many rules of evidence concentrate first on the relevancy of the offered evidence. See, for example Article IV of the Federal Rules of Evidence.

Rules of evidence also allocate among the parties the burden of producing evidence and the burden of persuading the court. See, for example Article III of the Federal Rules of Evidence or Division 5 of the California Evidence Code.

The Federal Rules of Evidence also address the admissibility of oral testimony, and Article V of the Federal Rules of Evidence and Division Eight of the California Evidence Code.

What about the laws of evidence; do they aid or promote justice? Can the average person familiar with courtroom proceedings honestly say that upon seeing how evidence is presented in court that justice is served? Who benefits from the privilege against self-incrimination and the right to remain silent? Does J.Q. Public benefit or is the privilege a cloak for injustice? Are attorneys, prosecutor and defense, abettors of injustice when

³³See <http://www.law.cornell.edu/topics/evidence.html>

they allow coerced confessions to be placed into evidence in trial? Is the innocent person afraid of self-incrimination and therefore should have the right to remain silent before his accusers? Silence works to the benefit of the one who has something to hide if the truth comes out. The innocent person is not afraid to speak. Who then does this privilege serve? It serves the guilty party. Is that just?

Regarding the deterrent theory of sentencing, what have we learned after three centuries? Does the weight of evidence dictate that this is an effective method? Do people stop robbing banks because they see bank robbers put away in prisons for long periods of time? Experts are yet debating this issue, and it seems that practically everyone is an expert. One thing is certain; people rob banks for different reasons. Those with altruistic motives are far fewer than those who do so because they are thieves. It is also certain that centuries of deterrent theories have not put a stop to criminal activity. To the contrary, criminal activity has been progressively increasing especially among the young in society. Jail terms have aided in making many hardened criminals. Is this justice or justice denied?

Justice Denied

Does it prove that justice is blind when a person is sent to prison and is later found to have not committed the crime? The civic book explanation of justice teaches as much. Even law schools teach as much. The thought is that the system corrects itself and, in the end, justice is served for the person who spent time in prison unjustly. Tell that to the person who has been falsely charged and spent the last five to ten years in a cell with men/women who have abused him/her in every possible way. What about the

five to ten years taken from his or her family? Do they count for anything? What about the fight he or she has on his or her hands to clear the record of the charges? Do you think that this is easily done? More importantly, what if the prosecutor and police withheld evidence from the defense that could have freed their client?

No doubt the reader is familiar with miscarriages of justice where people have served long sentences for crimes they did not commit. In some cases DNA evidence has been used to free a number of defendants on death row. Other times, people have come forward to confess to crimes years later. Since 1971, according to the Death Penalty Information Center, 99 death row inmates have been freed. Of this number, 11 by DNA results.³⁴ The case that follows is one example. [It is used to highlight the need to address how officials related to those charged with crimes as well as those found guilty by a court of law.] The below example is based on a real case with liberty taken by the writers.

Two women were sent to prison for the murder of a wealthy man who used them as playmates for a while. He promised them lucrative - paying jobs in his company and assured them that they were set for life. After three years, the wealthy man summarily dismissed the women without a cent. The news headlines reported: PLAYMATES SLAY WEALTHY SOCIALITE. According to the newspaper account, the two women took out a contract on the man's life. They were alleged to have contracted with a couple of local gang members in their city who made the hit. The case was airtight according to the news account because the police had a signed confession from the two gang members that they committed the crime. During the trial, the two gang members stuck to their

³⁴ <http://www.deathpenaltyinfo.org/Innocentlist.html>

story, and the two women were found guilty of murder in the first degree and sentenced to life in prison.

While in prison, they were abused at every level because the wealthy man had friends who made it hard for the women. Prison guards made sure they were assigned duties of the worst sort. Often they were in fights with women who were known to abuse other women sexually. Though they brought charges against the perpetrators, according to the two women, no action was taken on their charges. Instead, each was placed in close quarters with the offenders without proper supervision. Both women said that they were raped but did not report the offenses. They said that they do not know how they survived five years in prison.

The case broke wide open when a young lawyer began to dig into the police file of the two women. As it turned out, the two gang members' confession was coerced. Police had them up on a series of felonious charges including attempted murder of another gang member. The police threatened to charge them with a hit on a local mob member as well as the crime against the wealthy man. The fear of retaliation from the mob caused the two men to sign the confession. They were told that they would find favor when their cases came up. As it turned out, they were given long sentences for murdering the wealthy man.

Both men recanted their confessions, but to no avail. It was not until another man, dying from AIDS, confessed to the slaying of the wealthy man that the two women were set free. The young lawyer had found the man in a local nursing home after having heard that he had told a friend that he was the one who committed the crime against the

wealthy man. The dying man said that he had told the police his story, but they did not believe him.

The young lawyer found massive abuses of the two women's rights by prosecutors and police in his investigation. He found a web of lies involving the police officers who did the investigation and the prosecutors who prosecuted the case. It turned out that the police and the prosecutors withheld valuable evidence that could have freed the two women. The superior court judge who heard the findings of the young lawyer said that he had seen a lot of abuses by court officials in his days on the bench but what happened to the two women was beyond the bounds of fair play. He said that the police and the prosecutors deliberately concealed pertinent evidence from the defense and thereby demeaned the integrity of the court. Virtually every item of potential evidence useful to the defense went undisclosed.

The women were set free but not without a fight. The newspaper reported that the prosecuting attorney wanted to retry the women for murder. He felt the old man's testimony did not clear the women because the old man was known for engaging in nefarious activities. According to the newspaper account, the prosecutor thought the two women had contracted with the dying man to do the hit. The case broke on behalf of the two women when a friend of the man dying with AIDS came forward with his story that they had discussed killing the wealthy man because he had taken some property from the man dying with AIDS.

After the women were released from prison, they found no easy go of it in getting answers as to how the justice system could be so unjust to them. They wanted to know who would compensate them for the time taken away from their families. Would the

guards be punished who stood by and allowed them to be assaulted by women known for their brutal acts? Where was Lady Justice when they needed her, they asked. Moreover, they wanted to know what would happen to the police who framed them and the prosecutors who went along? As of this writing, the women yet await answers to their questions pertaining to the miscarriage of justice.

Perhaps the most insulting and the height of injustice occurred after the women were released from prison. As it turned out, members of the police force circulated accusations that the women were indeed guilty of the crime. It seemed to have been a deliberate plot on the part of some police officers to smear the names of the women so as to make it hard for them. It was reported that the police chief issued a statement to his officers that their deeds were unprofessional and must stop. While this was certainly welcome news to the women, one wonders why police officers would do such a thing in the first place. Is their action suggestive of a systemic problem or are the individuals involved in smear campaign a small band of rogue officers?

Repeat Offenders

Reason suggests that if people are found to behave badly at a pop concert, they are likely candidates to do so in other settings. If a person has a police record, the likelihood that police will have to arrest him or her again is pretty certain. What about law enforcement officers who are found to alter or fail to disclose evidence? Is it reasonable to expect that they might have done so on other occasions? Yes, as much as the person who has behaved badly at a previous pop concert. To say that it is reasonable to expect wrongdoing is not the same as saying the person actually did wrong. It could

be that the officers involved in the evidence disclosure matter and the subsequent smearing of the women after they were released from prison could have been first-time offenders. The question is, how shall the public know unless an investigation into their past practices occurs. In the case under discussion, there are no plans at present to reexamine previous cases to see if a pattern of abuse exists. The presumption is that there is no reason to look at past cases. Yet, police officers and prosecutors alike, always go back to the past to see if a track record of offenses can be established. Does not justice demand the highest moral and ethical standards of its officials? If the routine traffic case warrants looking into the record of J. Q. Public to see if he or she is a known offender of the law, should not the same principle be applied to officials found to be lawbreakers?

What of prosecutors who behave as did the prosecutors in the case under discussion? Is it enough to have their professional organizations handle their investigations or should this be a matter for the criminal justice system to pursue? Serious breaches of the law by sociologists, anthropologists, nurses, paralegal professionals, etc. are routinely referred to state attorneys or district attorneys. These highly trained, intelligent people would no doubt enjoy their professional organizations handling their investigations also. The point is that those sworn to uphold justice should be held to the highest moral standard as an example for the rest of society. Anything short of the requirement that our officials be held to the highest moral standards opens up the criminal justice system to the malaise of politics.

Politics and Justice

Politics is the human factor in justice. A person's politics defines the ethic and moral limits allowable in their lives. Some people are very moral and therefore careful about what they will or will not do. For example, they may refuse to lie while others may find it easy to lie if that lie would give them an edge in life. A person's politics influences how he or she behaves. Judges are not exempt from the influence of politics. For example, some women have failed to receive justice at the hands of male judges who lacked understanding of women's issues. In a divorce case, a judge influenced by conservative politics, may award women more than is prudent even when the woman is better educated than the man because of his/her belief that the woman should remain home with the children. On the other hand, a woman involved in the Women's Liberation Movement might receive a sum less than what is prudent. Such acts are a blow to justice.

Perhaps the most insidious breach of justice associated with the human factor is how court officials influence jurors of the guilt or innocence of a defendant based not on the evidence, but rather, on theatrics or outward appearances. Is it just for the prosecutor to appeal to the jury's emotional state to find a defendant guilty when he or she lacks evidentiary proof of guilt? What about the defense attorney's use of scare tactics to set the defendant free - is that just? Until the Civil Rights acts of the 1960s, Southern Politics dominated in cases where the complainant was white and the defendant black. Guilt or innocence rests not on the evidence but on the manipulative ability of cunning lawyers. It appears that the means is not as important as the end. When the focus of justice is on the end product without due care for the means employed by court officials, ethics and morality suffer.

If politics were a chicken and justice an egg, could it logically be concluded that one came from the other? If the chicken laid the egg, is not the offspring its chick. When the chick grows up, everyone expects the chick to look like, think like, and behave like a chicken because the chick receives its training from the chicken. While there is lively discussion as to which came first, the chicken or the egg, everyone knows that the egg comes from the chicken, and they also know that the chicken can lay another egg. What if the second egg is rotten, will the chicken love or reject it? The chicken does not cling to the odorous egg. Instead, the chicken seeks to bring about somewhat more perfect.

Justice in the United States is indeed the egg laid by the chicken called politics. As one expects the egg to mature and one day look like its begetter, so it is with justice. The criminal process is a political process. Justice is also a function of the political system. Justice systems evolve not out of righteousness, but rather out of people compromising with other people as to what works at the time, what is acceptable as right, and what the people to be governed could reasonably be expected to follow. Recall the example mentioned above about southern politics. Justice was based on what was right in the eyes of the whites with power. The laws and statutes enacted assured those with power that their way of life would be maintained.

When blacks in the Civil Rights Movement marched across the South in the 1960s, they did so for equal treatment under the law. Their cause was just. The country understood that their history with the justice system was one of injustice. Blacks saw justice perverted in the Medgar Evers murder trial when all-white juries failed to convict Byron De La Beckwith in two separate trials. It was not until 1994 that he was

eventually convicted though the evidence pointed to his guilt at the first trial.³⁵ In Florida, Freddie Pitts and Wilbert Lee, two black men, were forced into confessing murdering two gas-station attendants in 1963. These men spent a dozen years of their lives on Death Row before receiving a pardon by the governor of the state in 1973 after the real killer confessed.³⁶

Another miscarriage of justice in the State of Florida can be seen in Joseph Brown's case. In 1973, this black man was convicted of murdering a Tampa woman. He also came within 15 hours of death by execution. It took a federal appeals court ruling that Brown's conviction was a setup that ultimately spared his life.³⁷ The prosecutor used false testimony and conceded that an eyewitness had perjured himself in testifying against Brown. Though the march for equal justice was a just cause, law enforcement officers who had sworn to uphold justice abused civil rights marchers. When the police and their dogs tore into the flesh of the marchers, they were trying to uphold law and order. In other words, they were seeking justice for those whose way of life was threatened. White judges, lawyers, police officials as well as businessmen and businesswomen, preachers, university educators and others had a stake in keeping things as they were. The way things were in the south, justice demanded that blacks serve as second-class citizens. Justice declared that blacks had no rights that a white person needed to respect.

³⁵ See cases: De La Beckwith and Samuel Bowers, a former Imperial Wizard of the Mississippi White Knights of the Ku Klux Klan, who murdered Vernon Dahmer, Sr. in the Jan. 10, 1966, fire bombing at <http://stop-the-hate.org/dahmer.html>

³⁶ See <http://datastudion.nybro.se/mnemonic/freddiepittslivingproof.htm>

³⁷ See <http://www.truthinjustice.org/joegreenbrown.htm>

When the Civil Rights Acts of the 1960s were passed, blacks in the South had the legal right to sit at a lunch counter in a department store to order a meal for the first time. They were given voting rights previously denied them. They were assured that if local officials of the court did not seek justice for them, the federal government would. Why did these changes come about? Was it because the country got religion and saw its sinful ways? Could it have been that good men and women of the South secretly plotted the overthrow of their way of life because it was not right? Maybe the changes came because dynamic leadership in Washington, D. C., was acting on a plan they had devised to make sure all citizens were treated fairly under the law. Perhaps some of these reasons had something to do with the final push for change, but change itself came about when blacks and their allies rebelled against the status quo. In other words, blacks did not gain justice because the justice system was just. To the contrary, blacks confronted an unjust justice system with protests, economic boycotts, and destruction of property. Change was ushered in because the price was simply too high to continue life as it had been in the South. The political will of the people had changed, and, because of this change, the justice system accommodated.

Less than three decades after the passage of the Civil Rights Laws of the 1960s, the political will of the country began to swing back in the other direction. During the 1960s through the 1980s, affirmative action brought about needed social and economic benefits for minorities and women. Cities experienced unprecedented black political participation. Businesses opened doors of opportunity that had previously been closed not only to blacks but also to women. Universities saw the need to diversify their student bodies. The courts used civil rights laws to assure equal and fair play for blacks. Without

question the country made a big step to set its house in order. All of these things occurred not because the country was just or its justice system was without bias but, rather, because the political will of the country allowed for change.

Cutting the Deal

"Cutting the deal" is an apt description of politics. The leadership in Congress must gain support for legislation from representatives who in turn are held accountable by constituents. Constituents expect their elective officials to bring government-funded projects to their districts. Sometime much horse-trading is necessary to gain the support needed to pass legislation important to the country. The leadership of Congress, for example, might know that the economic vitality of the country would be enhanced if support were forthcoming during a financial crisis of a major city but cannot muster the votes in Congress to pass enabling legislation. Two votes could make the difference between passing and not passing the legislation. Let us say that New York has a financial crisis and that two Congressmen votes from the State of Georgia are needed to pass the legislation. Does it follow that the "gentlemen from Georgia" will act to aid New York because it needs help? Can the leadership count on every person in Congress to see the "big picture"? The "gentlemen from Georgia" may understand New York's plight, and in their hearts they may even desire to assist New York. More important than New York getting aid, however, is their desire to get reelected. This is where the constituents come in. The people in Georgia might have a long-standing dislike for those in New York. The people back home could generate enough pressure until the two "gentlemen from Georgia" find it very difficult to vote with the leadership. In truth, the people in Georgia

might feel what's good for New York is not necessarily good for Georgia. What is likely to happen next in this scenario?

The representatives from Georgia, holding the key to the passage of the bill, will likely find themselves invited to breakfast by the leadership. During this meeting the leadership will try to persuade them to vote in favor of the legislation. It is possible, even likely, that the leadership will offer to fund an important project for the State of Georgia if the two back the New York legislation. The project in Georgia could be more important than the dislike Georgians have for New Yorkers. If so, the representatives will likely back the legislation. In this example, would the two representatives have acted because it was right or because it was expedient? Actions by politicians have little to do with right and wrong, if no laws are broken, but have a lot to do with delivering government funds to their home states.

Relating this matter to justice, when it is expedient to pass legislation aimed at assuring justice for those historically denied, the political will has to be present. When the political will is present, Congress will pass legislation that the President will likely sign into law. If the legislation is contested up to the Supreme Court, the Supreme Court will likely rule the legislation to be constitutional. When the political will is lacking or it is not expedient, other officials may subsequently take away the rights gained. This is occurring presently in the area of affirmative action. Laws viewed a few years ago as just acts to correct past inequities experienced by minorities and women at the hands of private businesses and government officials are now viewed as being discriminatory to white men. The justice system that brought about the just changes in the 1960s is now working to erode the gains.

Why is there such a radical switch in the position of the courts as regard affirmative action? Was affirmative action a just cause two decades ago? If so, what makes it unjust today? Can whites honestly say that the economic inequities experienced by minorities and women have been corrected or that that these groups have reached parity with whites in the political arena. Not if they are honest. Affirmative action is as much a just cause as it was 40 years ago in addressing historic inequalities. What is missing is the political will of the people. Affirmative action has become a political football kicked around by politicians seeking to please majority group members who think enough has been done to help minorities. "The country must move away from race to relating to each person as an individual," they say. Affirmative Action was not and is not a program aimed at the erosion of the rights of individuals. The rights of all individuals in a just system must be protected. This protection, however, starts with moral and ethical politics. If the politics are just, the justice system will be just. In the just system all citizens will be treated in both a moral and ethical manner. Sad to say, the move toward the just system in the United States has experienced a setback.

South African Example

Those in power make rules of law to favor those with power. Consider South Africa as a case in point. Until recently, a small minority of whites ruled blacks ten times greater in number. The ruling people were a people of "law and order," and the citizens of the country demanded justice in their courts. This was so even though the majority of the black inhabitants, whose country it was at the beginning, had limited rights. Those running the country thought their justice system was right. Some members of the ruling

class went so far as to believe that they were acting in the highest moral and ethical manner toward the disenfranchised black population.³⁸ Was this system given birth by a just and fair people who sought fairness for all in the country or was it given birth by a people who sought to maintain the way of life of a privileged few? Of course, it was the latter. What about the United States? Was it established on moral and ethical principles of freedom and liberty for all people? The answer is no. The yo-yo status of blacks in the United States is an established fact. Earlier blacks came to the United States as seamen representing the upward position of the yo-yo. They became indentured servants, as representative of the downward move of the yo-yo. When forced into slavery, they reached the dead bottom. On the slow climb upward, blacks became 3/5 of a person, second-class citizens and finally a people with equal protection under the law. They had to fight a bitter battle against a justice system bent on protecting the rights of the privileged every step of the way. That fight is yet been waged today, as the courts seek to undo gains won via the protest movement nearly a half century ago. The courts are slowly stripping blacks of political power and economic power by ostensibly calling for equal treatment for all citizens without regard to race, gender, religion, etc. The new mantra is the same old mantra of “individual liberty” where group liberty is looked upon as un-American. The problem with this is that blacks and other minorities have sought equal treatment for all Americans for over 200 years. During the course of this time, blacks and other oppressed people have yet to experience the equality that the courts now seek.

The courts' focus on individual rights in America is idealized. Political systems do not evolve out of rights for individuals in society (though they may seek to assure each

³⁸ <http://www-cs-students.stanford.edu/~cale/cs201/apartheid.hist.html>

person is treated fairly). Political systems are established to meet the needs of groups of people willing to surrender certain individual rights for the welfare of the group. High among the needs is the ability to maintain the wealth of the privileged even though wealth may have been accumulated on the backbreaking labor of people who had limited or no opportunity to amass wealth. When the exploited demand the same rights as the privileged group, a conflict ensues. The society will act in one spirit to maintain its way of life even if it means denying the exploited ones' opportunities to succeed, as did their privileged group before them. In large measure this is what has happened to blacks in America.

Under pressure to respond to wrongs permitted by the justice system over time, the people of the United States summoned the political will nearly 50 years ago to make it possible for blacks and other minority groups (including women) to expect equal protection under the law, to live in decent neighborhoods, to secure employment and advancement up the corporate ladder, to marry whomsoever they desired, to vote without hindrance, to hold public office, to eat in any restaurant and to sleep in the hotel of their choice. These rights, however, were denied minorities in parts of the United States for nearly 200 years. Much of that time, the United States declared itself to be a world leader, founded on democratic principles where moral values counted for something, and where just laws ruled so that people would not.

Washington, D.C. is a city with 500,000 mostly black people, but they lack basic rights enjoyed by citizens in the other states. One example is home rule. President Clinton signed into law a bill which strips the half million people of Washington, D. C. of home rule during his tenure as President. Powers held by the local elected officials for a

quarter of a century were summarily transferred to a Financial Control Board, a non-elected federal agency. In this one move, the U. S. government took over housing, public works, civil administration, procurement, fire and emergency services, health service, regulatory affairs as well as the jails. How could such a thing be? Did the citizens of Washington, D. C. vote to have their home rule revoked? No! Politicians met and determined to take back what other politicians had granted. No doubt Clinton felt he was doing the right thing, but was he?³⁹

Is it just to deny a half million people the basic rights of all other U. S. communities? Could this matter have been dealt with short of stripping its people of the basic rights Americans assume all other Americans enjoy? If democratic government is the fairest form of government, how does one explain the action of the politicians? The official explanation will no doubt suggest a noble act on the part of politicians to help the District overcome years of deficit spending, mounting debts, disintegrating social services, mismanagement and a poor image. The perspective of the local elected officials is quite different. They see the move to deny the people of Washington, D. C. their basic democratic rights as a concerted effort by Congress and the Executive Branch, teaming with the Judiciary, to erode black political power. While this is not likely true, one wonders if such drastic action would have been taken if Washington, D. C. were not predominantly black. Did the minority group status of blacks in America have any bearing on the decision reached by the politicians to strip residents of Washington, D. C. of home rule?

³⁹ See <http://www.washingtonpost.com/wp-srv/local/longterm/williams/norton0106.htm> for a discussion on this topic.

When one looks at the history of race relations in the United States, it is not hard to see how race could have been a factor in the decision. Whites have long dealt with blacks in a way that breeds mistrust. Consider the promise of "forty acres and a mule" for liberated black slaves. What became of the promise? How does one explain the separate but equal laws of the late 19th century that denied blacks basic rights for many decades? Look at the unfulfilled promises of integration of the public schools.

Whites and blacks have also shared different experiences with the justice system. The average white person grew up viewing the police as friends. They saw him or her as the helpful "peace officer." On the other hand, the average black person grew up viewing the police officer as one to fear. They saw the police as the first line of attack against blacks in their struggle to gain rights that the average white person took for granted. These historic experiences have shaped how the two groups view justice in America. A well-publicized example was the not-guilty verdict rendered by the O. J. Simpson jury. Collectively, whites viewed the verdict as moribund, lacking in thought and unjust. The collective view of blacks was jubilation, expected and just. Each of the two groups acted out of political and social experiences nearly foreign to the other group.

Politics entered into the verdict of the virtually all-black jury in the criminal trial of O. J. Simpson and in the civil trial. The only question was whose politics. In the first trial, blacks jurors heard about policemen who entered O. J. Simpson's estate with so-called benign intentions without a search warrant. The policeman who found the bloody glove was later shown to be a racist cop. Time lapses in evidence reaching the appropriate authorities and the method of evidence-gathering left questions of doubt in the jury's mind. Moreover, the dramatic episode of the glove not fitting raised reasonable

doubt in the mind of the jury and many, if not most blacks. On the other hand, the nearly all-white civil trial jury weighed the evidence: the failure of O. J. Simpson to credibly explain the blood stains in his car that matched those at the crime scene, his past record of physical abuse against his wife, the bloody shoe prints made by a type of shoes he denied owning but was later seen wearing, how he cut himself and his whereabouts during the time the crime was committed. This, in addition to his failure to take the stand, added up to guilt in the minds of the jury at the civil trial and to many, if not most, whites.

If politics were not involved, two panels of jurors should have been able to hear the evidence and reach a just verdict without regard to the type of trial, criminal or civil. How do you account for the fact that the juries reached different verdicts, having heard nearly the same evidence? The major difference was the racial make-up of the jurors. One plausible explanation of their divergent views is their experience with the justice system. As stated above, the average white person is more likely to see the policeman as friend than the average black person. A friend is looked upon as one who is near and dear. He or she is to be trusted. Thus the testimony of the police in the O. J. Simpson case was believable to whites. The same policemen seen as the "enemy" of freedom by many, if not most blacks, were simply not trustworthy. In the end, the political socialization of blacks and whites being different gave rise to different views of the evidence in the trial.

Political Will Drives Justice

The truth of the matter is that nations, the United States included, establish their justice systems based on national interest (welfare of the group). When the welfare of the

group is threatened, nations take action to maintain their way of life. The justice systems of the countries do not fight their action but lead the charge. Why so? The reason is because the national interest of nations is bigger than any individual or unit of government. Moreover, countries do not live on an island by themselves. As such, they set forth legal justifications for their actions for the sake of their own people and other nations. How did President Johnson justify U. S. involvement in Vietnam? The national interest was at stake. Politicians also determined that it was in the national interest of America to war against Iraq. Congress could not prevent these wars, whether just or not, as no formal declaration of war was ever issued.

The point being made is that justice does not drive the political will of the people, but rather, the political will drives justice. A fair system of justice, however, does not compromise the rights of some of its citizens. A fair system of justice begins with the will of the people firmly planted in moral and ethical standards of conduct for its entire people. Using the above as a measuring stick, can any nation in American boast of a fair justice system? Both Canada and the United States are lacking with regard to treatment of their native peoples. Consider the treaties with the Indians as one index of fair play or the lack thereof. The history of the two nations is replete with treaties made with Indians favoring non-Indians. Moreover, less than favorable treaties have been broken time and time again when the conquering people thought it to be in their national interests. As for Latin American and South American countries, they have historically violated their peoples' human rights. Justice does not rule in these countries. Men like to think justice rules, but the truth of the matter is men and women rule.

Would the average American agree with the conclusion reached in this piece?

More likely than not, there would be disagreement. What is likely to be debated is the "tone" of the writing. Americans don't like to be preached at. They are quick to yell "self-righteous" as their parachute opens upon bailing out of the plane. To the ones who truly seek justice, on the other hand, this is not a self-righteous work. To them, this piece is the work of concerned Americans who seeks justice for all.

Chapter 4

Action Not Affirmed⁴⁰

“Justice, and only justice, shall always be our motto.”

Woodrow Wilson

Action Not Affirmed is a three-act play about the government during Woodrow Wilson’s administration. The two main characters are W. E. B. DuBois and Woodrow Wilson. These two are seen as equal in everything but the color of their skin. They are spokesmen for their groups. DuBois did not affirm the acts of government ushered in by Wilson.

At the end of the play, commentary is provided. A fresh look at the Wilson- DuBois debate calls attention to the century-long debate over affirmative action.

⁴⁰ This play, written by Deryl G. Hunt, Sr., is based in part on an unpublished manuscript by Lawrence C. Howard and Deryl G. Hunt, Sr. entitled *Praxis: A Cultural Approach to the Study of Public Affairs*.

Act One

Hope

Scenario: The presidential campaign of 1912 B The Black Endorsement of Woodrow Wilson

Scene: Living room setting (sofa, armchair, coffee table, tablecloth, books, newspaper)

Father: It is a strange thing, politics. One never knows whom to sleep with. One day a man seems to be your friend and the next three days, when a friend is needed, he cannot be found. On the fourth day, he shows up again.

The presidential campaign of 1912 has long puzzled me. Why did the Negroes endorse Woodrow Wilson and William H. Taft or Theodore Roosevelt for President? Dubois perhaps put it best when he said, The Negro is given a Hobson Choice; he is asked to vote:

1. For a party which has promised and failed. This was the Republican Party led by Taft.
2. For a party which failed and promised. This was the Progressive Party led by Roosevelt.
3. For a party which merely promises. This was the Democratic Party led by Wilson.

There are three types of parties you must not trust: the party, which promised and failed, the party which failed and promised and the party which merely promises.

Get your promises in writing, Son - - No less than three copies signed and notarized by a judge in good standing with the courts.

Son: I have heard much about Woodrow Wilson. My history professor thinks very highly of him. He says Wilson was one of the greatest leaders the country has ever had.

Father: Mr. Wilson was a great President, son. His greatness, however, was not found in his democratic policies. He was a great man on the international scene. He was great in the eyes of many whites, but blacks saw him as a loser.

Son: Why the chasm? Was he not President of all the people? Why would whites see him one way and blacks another?

Father: Good question. All good questions deserve an answer. (Pick up newspaper to read.)

(Long Pause)

Son: Well?

Father: Well what?

Son: (Says with sarcasm) The answer.

Father: We had better let the Narrator handle this.

Narrator: Thank you, sir. Let me set the stage for our discussion.

Negro leaders endorsing Wilson called for a major shift from the traditional loyalty they had given to the party associated with Abraham Lincoln, Emancipation, and Congressional Reconstruction. That this call for a change emanated from the radical editor of the *Boston Guardian*, William Monroe Trotter, and also appeared in the pages of the NAACP's *The Crisis*, edited by DuBois, makes this event particularly dramatic.

In the campaign, Wilson called for dramatic reforms, a New Freedom for the benefit of the common man. Blacks, quite naturally, hoped that they, too, were to benefit. But the meaning of words like freedom and reform had a different reference at the time. Blacks had listened to Progressive slogans and found that they were intended to guide changes in the condition of whites and not blacks. The interchange around what Wilson might have in mind during the 1912 campaign reveals a hesitant and ambivalent candidate, constantly pushed by Dubois, who lectured him on what freedom should mean.

Son: Did you hear that, Dad? Dubois lectured Wilson on what freedom should mean. That's all right!

Father: Dubois was in a position to see things from a different view than Wilson. Wilson was an accepted scholar, part president of Princeton University, and a man of the right color.

Son: Right color?

Father: Yes, Son. Wilson was white, and white made a difference in those days. People were openly prejudiced against blacks.

Son: What about Dubois? Wasn't he qualified? Did they reject him because he was less white than Wilson?

Father: Less white? Um (Pause). You got me there. Less white, huh? Well, DuBois and Wilson were both scholars. Each man made his mark in history – Wilson as a statement for the country and DuBois as a spokesman for blacks' rights. The only difference between these two was

skin color and their perspectives on administration. I'm getting ahead of the story. It's time for the Narrator.

Narrator: The Election of 1912 was not an easy one for Negroes. They courted each of the three parties. Black leaders initially sought to support Theodore Roosevelt and the Progressive. DuBois was their spokesman.

(OFFICE SETTING)

DuBois: (signing letter and then calls in secretary) Ms. Margaret, can you come here please.

Margaret: Yes, sir. What is it? Is the paper on hot or something?

DuBois: No. No. I am trying to help the ink dry faster. I need a second opinion. Sit down and tell me what you think of this letter to Theodore Roosevelt.

Dear Mr. Roosevelt. I am proposing the following policy as a plank for your convention:

The Progressive Party recognizes that distinctions of race or class in political life have no place in a democracy. Especially does the party realize that a group of 10,000,000 (ten million) people who have in a generation changed from a slave to a free labor system, re-established family life, accumulated \$ 1,000,000 (one million dollars) of real property, including 10,000,000 (ten million) acres of land, and reduced their illiteracy from 80 to 30 percent, deserves and must have justice, opportunity and a voice in their own government. The Party, therefore, demands for the Americans of Negro descent the repeal of unfair discriminatory laws and the right to vote on the same terms of which other citizens vote. (DuBois, 1968:238)

Sincerely yours, W.E.B. DuBois.

Margaret: Sound good to me, but I ain't sure how he gonna take it.

Narrator: And take it, he did not. Theodore Roosevelt would have none of it. He was heard saying that DuBois was a dangerous person.

As for the Republicans and William Howard Taft, blacks were not impressed by the recent appointment of William H. Lewis as Assistant Attorney General in early 1911, even though this was the highest post held by a Negro to that date. There were simply too many negatives in the Taft Administration, and most notable among them was his policy to withhold Negro appointments in the South. Taft had been quoted as saying: "There is no Constitutional right for anyone to hold office. The question is one of fitness. A one-legged man would hardly be selected for a mail carrier, and although we would deplore his misfortune, nevertheless, we would not seek to neutralize it by giving him a place that he could not fill." From this, Taft reasoned that Negroes should no longer be appointed to prominent positions in the South because, he argued, the antagonism created would irreparably undermine their effectiveness.

Narrator: (continuing.) As for Wilson, DuBois wrote, "There are, one must confess, disquieting facts: he was born in Virginia and he has headed a college which did not admit Negroes." DuBois went on: (DuBois still in the office.)

DuBois: (*voice is heard in the background as he is seen writing letter*) A man, however, is not responsible for his birth place or his college. On the whole, we do not believe that Woodrow Wilson admires Negroes... notwithstanding such possible preferences, Woodrow Wilson is a cultivated scholar and he has brains (where he keeps them I have no idea). We have, therefore, a conviction that Mr. Wilson will treat black men and their interests with farsighted fairness. He will not belong to the gang of which Tillman, Vardaman, Hoke Smith, and Blease - the brilliant expositors - belong. He will not advance the cause of the oligarchy in the South; he will not dismiss black men wholesale from office, and he will remember that the Negro in the United States has a right to be heard and considered; and if he becomes President by the grace of the black man's vote, his Democratic successors may be more willing to pay the black man's price of decent travel, free labor, votes, and education. (*The Crisis*, August 1912) Sincerely yours, W.E.B. DuBois.

(Says out loud) Perfect! (Begins folding paper as Narrator speaks)

Narrator: The crisis warning to Wilson reflected the increasing response obtained behind the scenes. Wilson had made an open bid for Negro support. In fact, on July 16, soon after the Baltimore Democratic Convention, Wilson met with the Reverend J. Milton Waldron and William Monroe Trotter and, in effect, stated that he needed and sought Negro support and pledged that if he were elected he would deal with Negroes as he would with other citizens, both in executing the laws and in making appointments. Waldron said that Wilson assured them that Negroes had nothing to fear from a Democratic Congress, and if, by some accident, Congress should enact legislation inimical to the Negro's interest, he would veto such laws. (Link, 1047:90)

Recognizing that something more definitive was required, Oswald Garrison Villard, grandson of abolitionist William Lloyd Garrison and a champion (among whites) of Negro rights, sought a clearer commitment. Wilson was personally friendly with Villard and was indebted to him, for the *New York Evening Post*, which Villard edited, had given him support both during his gubernatorial race and during his current Presidential bid. On August 13, Villard had a three-hour conversation with Wilson in Trenton, New Jersey. Villard left that meeting delighted by Wilson's pronouncements on the race question.

On August 14, Villard, assuming that full understanding on the Negro question had been achieved, sent Wilson a copy of *The Crisis* report of the Waldron-Trotter meeting.

Wife: (*Yells off screen*) Woody, did you get the copy of *The Crisis* I left on the table for you? It came special delivery.

Wilson: (Sitting down, propping feet up and skimming through the report, then yells) What!! I'm ruined !!

Wife: (Wife comes running out) What is it dear?

Wilson: Dear, you remember when I had lunch with Oswald the other day? Well, we talked about this and about that. We also talked about the Negro question. I have just read with amazement the Waldron statement. I, of course, said that I would seek to be President of the whole country, and I declared that the Negroes had nothing to fear from a Democratic Congress. On the other hand, I have not promised to veto legislation inimical to the Negro's interest, for I would make no such promise to any listeners nor any assurance about appointments, except that they need not fear unfair discrimination. (Link 1947:91)

Wife: Sounds like you gotta problem. Maybe you need to be telling him and not me.

Narrator: Villard, disturbed by the reply, wrote back. (*Villard in office setting*)

Villard: I feel very strongly that nothing important can be accomplished among the colored people until we have an utterance from you which we can quote. They not unnaturally mistrust you because they have been told that Princeton University closed its doors to the colored man (and was about the only Northern University to do so) during your Presidency. They know that besides yourself, both Mr. Acdoo and Mr. McCombs, are of Southern birth and they fear that the policy of injustice and disfranchisement which prevails not only in the Southern states, but in many of the Northern ones as well, will receive a great impetus by your presence in the White House. Again, as I explained to you, they want some assurance that they will not wholly be excluded from office, office meaning so much to them because the bulk of their race is absolutely devoid of any self-government, even in the smallest matters such as schools and the making of the town ordinances in which they live (Link 1947:91).

Son: Father, DuBois really did not want Wilson to be a friend of blacks.

Father: Yes, yes he did.

Song: "Hope for friendship?"

I am hopeful that you and I will have a relationship

of friendship, O, that you and I might fellowship,

For we have so much in common

O, I am hopeful for a friendship;

I need desperately to have a friend in you,

Will you receive my offer to be my friend?

Is there a higher thing that you can offer me?

I am hopeful of a friendship; I have need of fellowship with you;

You and I have so much in common

O, that you would be my friend

Can it be, will it be, that you and I will be friends?

For I am hopeful of a friendship, a friendship between you and me.

ACT TWO

Hope is Lost

(Scene of worried blacks)

Narrator: Wilson received the endorsement of DuBois, and he went on to win the election. Out of the 15,000,000 votes cast, 6.2 million, a minority, went to Wilson. Of this number, 100,000 came from blacks. What he lacked in the general election, he made up for in the Electoral College landslide with 435 votes to 88 for Roosevelt and 8 for Taft. More importantly, the Democrats gained control of both houses of Congress.

1st Man: Now that Mr. Wilson has won the election, will he do right by colored people?

2nd Man: Wilson is not that bad. He said he wanted to assure the colored people that should he become President, they could count on him for absolutely fair dealing, for everything by which he could in advancing the interest of our race.

1st Man: Talk is cheap. It's his action - or lack of it - which has me scared.

3rd Man: Yeah, what is he going to do about that situation in Cleveland where the top scores on the Civil Service exam was a black man, then a Jew, and the third a black man? When the order of the three was known, the position was abolished.

Narrator: The concerns raised by blacks were later proven to be well founded. Congress had no more than convened when a literal flood of anti-black legislation was introduced. The pro-segregationist fervor that had followed the Old Confederacy's return to power in the Southern States mushroomed in Washington. The Democratically controlled Congress began to consider legislation to exclude Negroes from commissions in the Army and Navy and from enlistment in these forces, to prohibit intermarriage and to segregate the carriers in Washington D.C. One resolution authorized the President to acquire territory in Mexico for the forced colonization of Negroes. Most threatening in its administrative implications was a bill that called for Negroes in the Civil Service to be segregated. Surely this was too harsh and punitive in content for a President pledged to be "president of all the people" to accept.

Wilson: (Inaugural address. Blacks listening to the radio)

Our duty is to cleanse, to reconsider, to store, to correct the evil without impairing the good, to purify and humanize every process of our common life without weakening or sentimentalizing it.

The firm basis of government is justice, not pity. These are matters of justice. There can be no equality of opportunity, the first essential of justice in the body politic, if men and women and children are not shielded in their lives, their vitality, from the consequences of great industrial and social processes which they cannot alter, control or

singly cope with. Society must see to it that itself does not crush or weaken or damage its own constituent parts. The first duty of law is to keep sound the society it serves.

This is the high enterprise of the new day: to life everything that concerns our life as a Nation to the light that shines from the hearth fire of every man's conscience and vision of the right. It is inconceivable we should do it in ignorance of the facts as they are or in blind haste. We shall restore, not destroy...justice, and only justice, shall always be our motto.

Narrator: The move to transform pre-election promises into tangible results for blacks actually began soon after the November election; however, in the early days of the administration, instead of responsiveness to black needs, a climate of benign neglect prevailed.

(Scene shifts to segregated work area. Blacks are segregated from white women by screens)

Worker: Man, we've gone from March to May and still no black nominations have been submitted to Congress. Why not? Meanwhile, the nation's observing good ol' Mr. President Wilson's unprecedented leadership: he's trying to establish close contacts with the Congressional Party Caucus and the Committee Leadership like Jefferson did. Yeah, and he thinks he's smart by skillfully employing the party as a legislative force. And he calls this the "New Freedom" program. That's why blacks are beginning to fear that their legitimate interest will go unnoticed.

Song: "Hope is Lost"

*I thought we would be friends;
You said wonderful things in your correspondence to me;
I thought there was hope for liberation, liberation for the oppressed,
But now I see your deeds, your action is not affirmed.
What you could have done, you did not.
The good that you should have done; you chose otherwise.
O, how I desired for hope, but now hope is lost.
Hope is lost; I put my trust in you
Yet, I knew, you were prone to fail me.
Now I am saddened because of your deeds
Your action not affirmed, your action is not affirmed.
That which you have done is grievous indeed
Hope is lost, your action not affirmed
Your action not affirmed, your action not affirmed.*

Narrator: By far the most bitter blow to Negro hopes for advancement came with the Wilson Administration's move to establish segregation in the Civil Service in Washington. The subject of Negro-White relationships seems to have come up only incidentally in a Cabinet meeting, April 11, 1913. Albert Burleson, the Southern-bred

Postmaster General expressed his concern to that small closed meeting regarding certain 'intolerable' conditions in the Railway Mail Service.

(Cabinet meeting scene, members are speaking to each other in utterance.)

Chairman: Is there any more discussion on the segregation issue?

Burleson: Yes, I have something to discuss.

Chairman: Yes, Mr. Postmaster, you are recognized. Please express your concerns.

Burleson: This Negro-White relationship thing has to end. Whites not only have to work with blacks, but we are forced to use the same drinking glasses, towels, and washrooms. I do believe that it is to the advantage of both races to implement a policy of segregation in the Railway Mail Service. *(Members nodding in agreement.)* I suggest this be done in a gradual way, while continuing the employment of Negroes where such "Would not be objectionable." The project will begin in only one section of the Federal Service, but I strongly hope that segregation could be promoted in all departments of government. Thank you. *(Members continue discussing the issue in silence.)*

Narrator: If there was any objection to or discussion of Burleson's plans, it was not recorded. But "President Wilson was quoted at the time saying that he desired, above all, to avoid friction in federal service posts. Having a strong concern about the matter of segregation, Villard thought it best to visit Woodrow Wilson.

Villard: Good day, Mr. President. Let's get right down to it. This matter of segregation is not right. Do you realize the extent to which these actions have gone, and the dangers involved? Do you know that you are driving the Negroes to the Republican Party?

Wilson: Oswald, my dear friend, it is true that the segregation of the colored employees in the several departments has begun upon the initiative and at the suggestion of several of the heads of departments, but as much in the interest of the Negroes as for any other reason, with the approval of some of the most influential Negroes I know, and with the ideal that the friction, or rather the discontent and uneasiness, which had prevailed in many of the departments would thereby be removed. It's as far as possible from being a movement against the Negroes. I sincerely believe it to be in their interest. And what distresses me most is to find that you look at it in so different a light.

I'm sorry that those who interest themselves most in the welfare of the Negroes should misjudge this action on the part of the department, for they are seriously misjudging it. My own feeling is, by putting certain bureaus and sections of the service in the charge of Negroes, we are rendering them more safe in the possession of office and less likely to be discriminated against.

Narrator: This explanation—made to a friend and white supporter—is revealing. Perhaps this was the “fair discrimination” Wilson had alluded to Villard previously. From a black perspective, certainly here was ambiguity that bordered on duplicity, understandable in the paternalism of the plantation, but despicable against the DuBois measure of dignity for free people.

During the same week, Wilson was also responding to Thomas Dixon, author of the *Clansman* and other anti-Negro novels. Dixon was protesting what he labeled as “a Negro to boss white girls as Register of the Treasure”. Wilson replied:

Wilson: (*On the phone*) I do not think you know what is going on down here. We are handling the force of colored people who are now in the departments in just the way in which they ought to be handled. Mr. Dixon, please understand that we are trying - and by degree succeeding - a plan of concentration, which will put them all together and will not in any one bureau mix the two races. This change has already practically been effected in the bureau in which I proposed the appointment of Patterson. Calm down, Mr. Dixon, it would not be right for me to look at this matter in any other way than as the leader of a great national party. I am trying to handle these matters with the best judgment, but in the spirit of the whole country, though with entire comprehension of the consideration which certainly does not need to be pointed out by me.

Narrator: Coincidental with these events, a white group was formed in Washington, D.C. euphemistically called the National Democratic Fair Play Association. Its purpose was to fight to establish segregation in all government offices. These white office seekers cited the fact that of 490,000 workers in Washington, 24,500 were Negro. The group wrote expressing their sentiments to Wilson and to Burleson, calling attention to their party loyalty and demanding the jobs that Negroes held.

Song: “Hope is Found” (Hooded people)

That which I have been looking for, for so long
That which I have desired for so long
That which is the good and the right thing to do,
I have found in you.
You are my President; I take delight in you.
There is none so great as yourself.

O, I have found hope in all my desires.
Bigotry is the root of me and in you, I have found my hope.
When I hope to express myself in all of my diabolical ways,
O, you know how we play the game;
We speak with a forked tongue.
But, we mean the opposite of what we say
We call black white, and we call white black
But we know the game and what you spoke
You’ve spoken it unto us.

I have found hope, hope in you.
O, you will do right; you will surely do right.
Go on, do the right thing.
Make matters as they should be.
Bring me to the top; keep under my feet everything not like us.
I have found my hope; my hope is in you.
Bigotry, is the root of me.
And you have brought it out perfectly.
I have found my hope; my hope is in, in you.

Narrator: The news of screens being erected in the Navy Department, the sending of other Negroes to work in cellars and the “mandatory use of separate lavatories in the Treasury Department” soon leaked. “A signed newspaper article in the *Washington Star*, August 9, 1913, vouchsafed the information that these separate lavatories were used without protest because of ‘fear of dismissal.’

Margaret: Mr. DuBois, have you seen today’s *Washington Star*? It’s not good.

DuBois: (*Reading the newspaper*) “Wilson is bringing the punitive power of the organization to be brought to bear on the implementation of the policy. Dismissal, of course, is the bureaucracy’s major weapon to assure compliance—and once threatened with it, the whole culture of the organization was transformed. Those who object to the policy will be immediately put in jeopardy and any blacks who acquiesce will be personally humiliated and reduced in status in the eyes of white employees at whatever level of assignment. (*Puts the paper down, then says*): I believe a phone call is in order.

Narrator: The implementation of this new policy brought an almost immediate protest from black leaders. Once more DuBois lectured the President and leader of the New Democracy on democracy:

DuBois: The perils of ascending to the prejudices of administrators who, in addition to being unaccountable, make policy in a way that is all but unknown, is too much to bear. Policy-making and administration should be separated. Do you know these things, Mr. Wilson? Do you consent....do you believe....national insult is best? No sane party can ignore 500,000 votes that will be counted.

Narrator: Wilson’s response is equally instructive....’He gave back no reply.’ Instead, even in the midst of mounting protests, the Administration demanded and received the resignation of P.B.S. Pinchback whom Taft had appointed Assistant of the New York Customs Service. The act was highly symbolic. Pinchback, from Louisiana, had been elected to both the House and Senate in 1872-73 but was denied his Senate seat after almost “the whole of an extra session of Congress had been devoted to the discussion of the senator-elect’s credentials.” Pinchback was also referred to as “Governor” by Negroes, because he had served as Governor of Louisiana for 34 days following the impeachment of the former Governor. Moreover, as an administrator in

New York, his work had been outstanding. Wilson, in short, was moving relentlessly in the effectuation of the new policy of segregation at every opportunity.

For blacks, Wilsonian administrative practice was oppressive and humiliating. Wilson appointed two (2) blacks to high-level government positions, 24 less than accepted in that day as Negro appointment. This same man, however, is crowned, “Father” of the study of Public Administration.

ACT 3; IT'S A NEW DAY

(Scene opens with '90s, a picture of whites and blacks together.)

Narrator: It's a new day. We have moved from the past and now we are in the enlightened '90s. The baseball strike has ended, and the Democrats yet have their man in the White House. Republicans, however, control both houses of Congress. What's on people's minds today: taxes, immigration, deficit spending, and affirmative action. Yes, the great debate in the '90s is affirmative action.

Song: "It's a New Day" (Strike up the band)

2X It's a new day; it's a new day; it's a new day.

We have marched on; we have marched on; we have marched up the road. We have moved from the time of the past, and now we are home in the '90s.

It's a new day; it's a new day; it's a brand-new day;
The debate yet rages; Affirmative Action is on our mind;
It's a new day; it's a new day; it's a new day.
This one is; that one isn't; she is; he is not
What are we speaking about?
Qualified, unqualified, whether you are black, must be white
Come now, let me show what is right.

2X It's a new day; it's a new day; it's a new day.

We have marched up the road; we have moved from the past and now we are in the '90s.

Affirmative Action is the debate; this is what we have to say
Qualified, unqualified, black, white, yellow, red, who is here to take your place
It's a new day; it's a new day; it's a new day.
Gains are found in government today, everybody has a chance.
This is the day; this is the way
It's a new day; it's a new day; it's a new day today.

1st Debater: Ladies and Gentlemen, I am here to speak on behalf of the Affirmation Party. We are known throughout the United States as the society that affirms all things. It is with great pleasure that I now affirm the following:
You can always count on us to do the right thing for the country;
We believe in the Constitution of the United States, and
The rights of every man, woman, boy and girl in this great country must be protected.
You can count on us to uphold the Constitution and to protect your rights. If you feel anyone, and I mean anyone has taken that which is yours, we affirm that our duty is to come to your aid. We affirm all good citizens of the United States. It matters not which group you hold membership to; the only thing that counts is that you have a friend in the Affirmative Party.

Some people misunderstand us because we affirm such things as past inequities. How can a party whose very name is Affirmation, not affirm inequities? We believe every person should be treated equally under the law. We say yesterday is gone, and tomorrow is to come. Right now, right now, is what we affirm.

In a 100-yard foot race, do they give shorter people a 10-yard advantage because they don't measure up to the others in height? No. They start the three-foot tall man and the six-foot tall man together. They both have opportunity to win the race. No one is given an unfair advantage over the other.

Let us stand firm in what we affirm. We, the Affirmative Party, affirm the affirmative.

2nd Debater: Ladies and gentlemen, you have heard the critical words of the first debater. He does not speak for the good of the country. He seeks only to preserve the way of life of the Affirmative Party. Man should not be judged by what he affirms; he must be judged by his deeds.

I am the spokesman for the Action Party. We look at deeds, deeds and nothing but deeds so help us God. What we have seen over the years is a history of neglect by the Affirmative Party. They have neglected to even look back to see how they got their present status.

Had they looked back, just once, they would have noticed that all is not affirmable. Some actions are too gross to affirm. Should liars be affirmed? What about murderers? How about bigots? These should not be affirmed but they have been and are yet affirmed to this day.

There was a man who put his hope in a member of another party. He said:

The leader of the Party would treat Mocha men and their interest with farsighted fairness;
He would not belong to the Affirmative Party;
He would not advance the cause of the oligarchy in the South;
He would not seek further means of Jim Crow insults;
He would not dismiss Mocha men wholesale from office;
He would remember the Mochas in the United States have a right to be heard and considered.

And what happened when the man he trusted became President? Did he treat Mochas' interest with farsighted fairness? No! Did he become a member of the Affirmative Party? No! He was already a member. Did he aid in the oligarchy of the South? You can bet your new shoes on it. Did he seek to stem the tide of Jim Crow insults? No way, the man aided and abetted the purveyors of hate. What about wholesale dismissal of black men from office? The 26 Mochas appointed to high office before the man won election were reduced to a measly two. Did he remember that Mochas had a right to be heard and considered? If he did, he kept it a secret.

This one man's actions sum up the Affirmative Party. Everything he affirmed worked against equity for blacks. We have the same spirit at work today in the Affirmation Party. We repudiate that spirit with all that is right before God.

Narrator: The debate in the '90s is about affirmative action. From the debaters, you can see this is a sensitive issue. Both debaters approach the matter in part. The first affirmed but did not follow through with right actions. The second judged the acts with little consideration for the motive.

There is a middle ground between these two poles. Which way will we go? Will we go up in love together or will we go down to destruction in hate? The choice is before us. None of us can say we have all right and no wrong? It is time for humble pie. Who shall cease the rhetoric and call for unity among us?

Song: "Which Way do we Go"?

Which way do we go? Are we going forward or backward?
Which way do we go, O people of mine.
Which way do we go? Show me the way.
Which way do we go? Do we go forward or backward?

Do we go together or must we depart?
Which way do we go?
There are two roads:
One road says: equity, fair play, friendship, unity and love;
It beckons us to come to travel thereupon.

There is a second road and it says:
Inequity, foul play, enmity, division and hate.
It also beckons that we travel thereupon.
Which way do we go, which way do we go?

Do we go up together, ascending higher in love?
Do we go up together, ascending higher in love?
O, will we be pulled apart going down to destruction, the destruction of hate,
which way do we go?

Which way do we go, which way do we go?
Equity, fair play, friendship, unity and love or
Inequity, foul play, enmity, division and hate.

2X Which way do we go, which way do we go?

We're at the crossroads; we must go one direction or the other.
Which way do we go, which way do we go?

Equity, inequity, fair play, foul play, friendship, enmity, unity, division, love or hate

Which way, tell me, all you people, which way do we go?

2X Which way do we go, which way do we go?

A Fresh Look at W. E. B. DuBois and Woodrow Wilson

While reading the above chapter, did you take sides either with W. E. B. DuBois or Woodrow Wilson? Without question, many of you formed an opinion about the two men based on your prior knowledge or the new knowledge gained from our discussion.

Forming opinions based on limited knowledge is a very dangerous thing. Yet, people are quick at doing this. Many times they reach judgments before the sound is heard of the snapping of the fingers; a sound produced by rubbing thumb and index finger together. We believe Woodrow Wilson to be guilty of this act.

In other words, he based what was "right" for Negroes on a limited knowledge of them. His policies toward blacks tended to be paternalistic.

When the snapping of the fingers alerts an unwatchful person to duck, thus avoiding an oncoming destructive object, we call that action, "right action." Friction in this example, far from being bad, is seen as a neighborly thing - a thing any good citizen would do for another person. We believe W. E. B. DuBois was closer to being that good citizen than was Wilson.

As for the reader, you must not rush to judge. Examine what we have said - think on the words - See if our motive is right. If you agree with us, let it be because you believe our efforts are sincerely aimed at improving public affairs education and administration. If you do not agree, do not accuse us. We are convinced there are no inherently evil things. Evil comes about when people use things for destructive purposes. For example, when Woodrow Wilson sought to remove friction from the workplace by segregating black and white workers, he made friction to be something evil. His action caused one group of American citizens to feel at liberty to trample upon the rights of American citizens. W. E. B. DuBois reacted to Wilson's wrong action by offering an alternative action more in line with what we today expect of good citizens. We call W. E. B. Du Bois' alternative a praxiological outlook.

Was W. E. B. DuBois better than Woodrow Wilson. We are sure some say yes while others say no. An even larger group may say that they were the same. We agree with the larger group. Our goal is not to belittle Wilson nor is it our intention to make a god out of W. E. B. DuBois. We simply have before us two men, one black and the other white, whose views of society were at odds and, we believe, at least one of them, Wilson, was not good to the country.

What Wilson called friction fourscore years ago, some politicians today call "Affirmative Action." These are cryptic words, a subterfuge used by those who do not wish to see every American treated fairly. They are often expedient expressions to give greedy men and women, hungry for power, an upper hand on their political opponents. This view was seen in Wilson at the turn of the 20th Century and is present in many would-be presidents at the end of the century of doing right about African Americans.

Consider two newspaper articles from The Miami Herald. Both relate to our times, but they are products of the belief system of men of Wilson's day and even earlier. The first article is an international piece while the second domestic. The first is about genocide, and the second, affirmative action.

The headline of the first article reads:

'Stolen generation' sues Australia for genocide

The subscript is:

'Aboriginal kids snatched from homes'

The article spoke about the brutal separation of children from their parents – light-skin children were given to white families for adoption - but darker-skin children were placed in orphanages. According to the article “under Australia's Northern Territorial law, in effect from 1918 to 1953, it was legal” (The Miami Herald, Thursday April 4, 1995, p. 18A).

As you read the remaining portion of the article, think back on Wilson's influence on public affairs education and administration. Can you see a tie between Wilson's policies and that which occurred halfway around the world?

Police used the law against Australia's aborigines, creating a “stolen generation” in a supposed effort to save a dying race by integrating its young into the white majority. Light-skinned aboriginal children were seized, and then handed out to white families. Dark-skinned children were put in bleak orphanages.

“I wasn't bitter at anything,” says Hilda Muir. Now 76, she was taken from her mother's side at age 8.

“But I still always regret that I never went back to see my people or see my mother especially. That was the saddest part, that we didn't go back.”

She and five other aborigines sued the government on Tuesday for forcibly removing them from their homes.

They walked into the High Court in Melbourne, filing papers that charge that the territorial law was unconstitutional and violated the U.N. Convention on Genocide.

“It was a very powerful moment,” said Wes Miller, director of the Katherine Aboriginal Legal Aid Service.

Thousands of aborigine children were removed from their homes from the 1920s to the 1960s. Authorities believed that aboriginal people would eventually die out. They thought they were doing the children a favor.

Muir said she spent six years at Kahlin, an Outback camp for mixed-race aboriginal children. She often slept on the floor and was beaten. She had to sneak off at times, risking more abuse, to scavenge for food scraps.

Another aborigine, Alec Kruger, described Kahlin as “a concentration camp” where the children were never allowed to associate with their families of full-blooded aborigines. If the challenge is successful, the aborigines will then seek damages for cultural, family and spiritual loss and suffering.

Hundreds of other cases would then be set to follow in a class action. Aborigines could be awarded millions of dollars in compensation from the federal government.

There are only about 125,000 aborigines left in Australia, just 1 percent of the continent's population. (The Miami Herald, Thursday April 13, 1995, p. 18A).

Having read the article, do you now see the importance of W. E. B. DuBois' reproofs of Wilson's policies? W. E. B. DuBois knew the racist nature of Wilson's policies though Wilson did not see himself as a racist and DuBois was hopeful that Wilson was not. What Wilson saw was a problem in dark skin. The country had made African Americans to be a problem by not dealing with them fairly and was not in a frame of mind to accept the darker skin people as fellow human beings to be treated with respect and honor.

To a certain degree, there is yet hate in America based on skin color today. The hate goes both ways in - whites hate blacks and blacks hate whites. Beyond the hate, which is easier for politicians to deal with, is the thought pattern of too many whites that blacks are inferior to whites. This is not about an overt act of hate but rather, an ingrained racial bias, often hard for many whites to detect. We believe that bias was found in Woodrow Wilson as well as the public officials in Australia cited in the article above. Moreover, we believe bias is also in some whites today who seek to be president of the U.S.A.

This brings us to our second *Miami Herald* article, dated, April 17, 1995. The article is found in the editorial section of *the Herald*. It is written by Nell Painter, a professor of history at Princeton University. The irony could not escape us that Professor Painter is teaching at the very school which Woodrow Wilson served as President - a school where Dr. Painter could not have attended during Wilson's presidency. And this is the point of the article, biased attitudes of the past have returned under the guise of affirmative action.

We have included the article below for your consideration.

I've always thought that affirmative action made a lot of sense. It's obvious to me that discrimination against black people and women has been so prolonged and thorough that something needed to be done about it. But I know that not everyone shares my views.

One evening many years ago, I attended a lecture to which I arrived early. I was doing what I often did that fall: I worked at polishing my dissertation. Next to me sat a white man of about 35, whose absorption in my work increased steadily

"Is that your dissertation?" he asked. I said "Yes, it was."

"Good luck in getting it accepted," he said. I responded that it had already been accepted, thank you.

Still friendly, he wished me luck in finding a job. I told him that I was a beginning assistant professor at the University of Pennsylvania.

"Aren't you lucky," said the man, a little less generously.

I agreed. Jobs in history were, and still are, hard to find. While cognizant of the job squeeze, I never questioned the justice of my position. I should have a job, and a good one. I had worked hard as a graduate student and had written a decent dissertation. I knew foreign languages, had traveled widely, had taught, and had been published. I thought that I had been hired because I was a promising young historian.

"I have a doctorate in history," he resumed, "but I couldn't get an academic job." With regret he added that he worked in school administration. "It must be great to be black and female because of affirmative action," he said. "You count twice," I am what some people call a "twofer."

This was the first time that I'd met it face to face, and I was embarrassed. Did this man really mean to imply that I had my job at his expense?

Later, when I lived in North Carolina, I ran into a similar situation while having lunch with some black undergraduates. One young woman surprised me by deploring affirmative action.

"White students and professors think we only got into the University of North Carolina because we're black," she complained, "and they don't believe we're truly qualified."

Another student said that the stigma of affirmative action extended to black faculty as well. She had heard white students doubting the abilities of black professors.

That was more than a decade ago, and we are still talking about the merits of affirmative action. Both whites and blacks are asking, "Who benefits from affirmative action?"

Well, I have. But not in the early 1960s, when I was an undergraduate in a large state university. Back then, there was no affirmative action. We applied for admission to the university like everyone else; we were accepted or rejected - like everyone else.

Yet we all knew what the rest of the university thought of us, professors especially. They thought that we were stupid because we were black. Further, white women were considered frivolous students; they were supposed to be in school only to get husbands. And black women were the ultimate outsiders.

Skirts and dark skins appeared in new settings in the 1970s, but in significant numbers only after affirmative action mandated the changes and made them thinkable. Without affirmative action, it never would have occurred to any large, white research university to consider me for professional employment, despite my qualifications.

My Philadelphia white man and my Carolina black women would be surprised to discover the convergence of their views. I wish that I could take them back to the early '60s and let them see that they're reciting the same old white-male-superiority line, fixed up to fit conditions that include a policy called affirmative action. Actually, I will not have to take those people back in time at all because the Republican assault on affirmative action fuses the future and the past.

If opponents of affirmative action achieve their stated goals, we will have the same old discrimination, unneedful of new clothes.

Having read the article, are you better prepared to deal with the affirmative action issue? Were you able to see how Painter's "white friend's" view of African Americans is largely the same as Woodrow Wilson's view 80 years ago? Were you able to behold the spirit of W.E.B. DuBois in Professor Painter as she responded to those who questioned her qualifications to teach history?

And the "black friend" of Painter, can you see the impact whites' bias has had on this young one's perception of her ability and even her worth to society? When the matter is viewed with the goal of freedom for the oppressed, W.E.B. DuBois' (Painter's) perceptions far outweigh Wilson's (Neo Wilsonians) policies.

Chapter 3 Part 3 Training

Cultural View of Justice

People sometimes hold such strong opinions about matters until it is nearly impossible to change their views. An example can be found in a religious group whose leader predicted that the world would end on a certain day. The leader called himself a prophet, and according to him, “the prophet of God’s word is a sure word.” Though his prediction proved to be wrong, the people following him did not change their minds about him; they merely revised the date that the world would end. When the second date passed and the world did not end, the people still refused to change their views about their leader. In the face of evidence to the contrary, why did the people continue to believe their leader? One possible explanation is that the followers were not acting in a rational manner, but, to the contrary, they were guided by strong emotional feelings grounded in religion. This view may be defined as an outsider’s view. Another possible explanation is that the people genuinely believed that he heard from God. This view may be defined as an insider’s view. To outsiders, the leader was seen at best, a deceived religious zealot, and, at worse, a lying cult leader. But to insiders, he was, as he said, “the voice of God.”

The insider’s view vs. the outsider’s view can be seen as a clash of cultures. Those holding the insider’s view knew their leader as a charismatic dynamic leader who had proven faithful in service to their community for more than two decades. What endeared them most to the man was his religious zeal. From the view of the outsiders, however, the insiders were thought to be an emotional, child-like people, following after a leader in an irrational manner. To the outsiders, the man was viewed as a cultic leader cut in the mode of Reverend Jim Jones, another charismatic leader who, in 1978 in Jonestown, Guyana, persuaded his followers to drink a death potion resulting in the death of 914 cult members including 214 children.⁴¹ The insiders accused the outsiders of lacking faith, being too analytical in their approach. The two groups never did see eye to eye because neither was willing to give up their fixed positions.

This brings us to the fixed positions held by many whites and blacks regarding the O. J. Simpson verdict. Though a jury found him not guilty, most white Americans disagreed with the verdict while most blacks agreed.⁴² The trial of Simpson uncovered a chasm between how whites and blacks view justice in America. That chasm is confirmed in the present study. Whites who disagreed with the verdict expressed outrage. They could not understand how the jury reached a not-guilty verdict given the weight of the evidence against Simpson. To them, Simpson had motive and opportunity to carry out the crime. In addition, physical evidence; linked him to the crime. Blacks, on the other hand, looking at the same evidence, simply did not believe Simpson committed

⁴¹ See <http://archive.nandotimes.com/newsroom/nt/328jones.html>

⁴² Simpson was subsequently found guilty in Civil Court. The court assessed a multimillion judgment against him to be paid to the Goldman family.

the grotesque act. It was not that they did not believe the evidence, to the contrary, they did not trust the investigating officers' account of the evidence. The black community believed Simpson's alibi.

After the verdict, mass media wasted little time reporting the cleavage between whites and blacks over the verdict. The stoic faces of some whites on TV contrasted sharply with the jubilant faces of some blacks. The media's analysis of the two groups' behavior suggested that whites were more objective assessors of the evidence; whites had thought through the evidence in a rational manner and reached the correct verdict, guilty. On the other hand, the media suggested that blacks were less rational and biased in their view of the evidence allowing their feelings to cloud their good judgment. Based on the media's analysis, we conclude that whites reached the guilty verdict based on a cognitive reasoning model. Blacks, on the other hand, including the mostly black jury, may be said to have reached their decision based on an affective reasoning model.

The cleavage between the two groups boils down to perceptions, more precisely, racial perceptions. In the section that immediately follows, we discuss how racial perspectives are formed and how they impact the group's ability to see or understand people, events, things, etc. We outline what we believe are the characteristics of the White Perspective, the Mystical Black Perspective and the Black Perspective. We then return to an analysis of the O. J. Simpson trial in light of the discussion on racial perspectives. Afterward, we offer a training exercise aimed at understanding justice by those who are culturally different.

In the series of exercises, the student is to find Akili. Akili is not a person, but rather, a way of life. In the African language, Swahili, Akili means cleverness, intellectual, and wise one. From the Arabic language, Akili is defined as knowledge. This exercise is a celebration in knowledge of cultural justice. The next section is an interview with a social scientist whose views about justice are recorded. This is followed by a series of interviews with lawyers regarding their views on justice. The final exercise is the effect that a truly just legal system would have in building community. The method used is a series of exercises, word puzzles, which were designed to facilitate frank discussion of the strengths and problems of the legal system and possible solutions.

Determinants of Racial Perspectives⁴³

In this section, we show how a combination of moral, philosophical, cultural and social determinants forms racial perspectives. Our goal is to encourage dialogue between and among court officials from culturally different groups toward the end of developing a fairer system of justice. The moral determinant of racial perspectives makes provisions for the sanctioning of the groups' behavior. Sanctions may be positive or negative, i.e., right or wrong, good or bad (Hunt, 1972). The moral determinant of racial perspectives helps to establish the parameters for the existence of a normative system within the

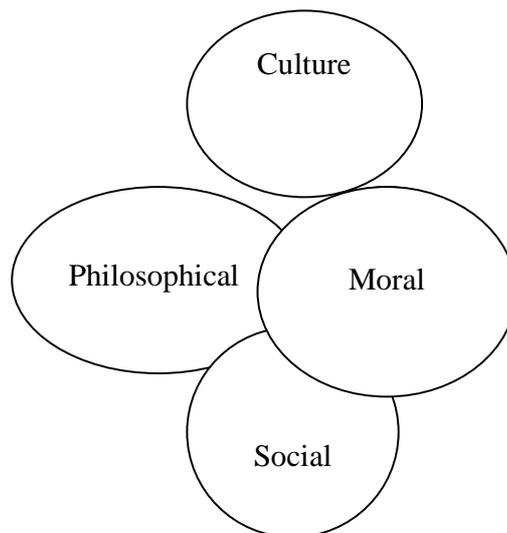
⁴³ This section was taken from a work by Deryl G. Hunt, Sr. titled, "Reflections on Racial Perspectives: Blacks in The African Diaspora."

justice system. As morality is closely aligned with religion, groups often use religion to justify their beliefs.

The philosophical determinant of racial perspectives is grounded in the basic “belief system” of the justice system. The “belief system” is established in order to help perpetuate the system and to provide parameters for a normative system along with morality. The belief system is comprised of a combination of beliefs, attitudes, and values of the group members. This interlocking network of relationships helps to determine perception of the group (See Figure 1).

Once formed, the group perception becomes the norm in interacting with “outsiders.” If the group’s perception of others is subjective, though the group members may not think so, the behavior of the group will be consistent with the groups’ subjective definition. (Parson, 2) An example of this is found in Andrew Smiths (3) *Pastoralism in Africa: Origins and Development Ecology* , as it relates some whites’ notion of race, particularly from the perspective of how whites think their religion defines it:

FIGURE 1
DETERMINANTS OF RACIAL PERSPECTIVES



According to the Boer idea, the Kaffer, the Hottentot, the Bushman belong to a lower race than the whites. They carry, as people once rightly called it, the mark of Cain; God, the Lord, destined them to be “drawers of water and hewers of wood,” as *presses*

[servants] subject to the white race. (Reader, 4, p. 490) **From the above quote, one can see how a group's subjective definition of "outsiders" is a function of their belief system as part of their socialization process, and is, therefore, culturally rooted and grounded in morality born of religion.** The belief system influenced their justice system, which, of course, denied justice to most South Africans.

Crucial to an understanding of racial perspectives, therefore, is an understanding of how people perceive. As earlier pointed out, perceptions and perspectives are similar in that each is made up of culture, social, moral and philosophical determinants of behavior. These determinants of behavior are manifested in feelings, beliefs, attitudes, and values that people hold toward objects, events or other people. Perspective and perception differ, however, in the sense that perspective is defined as a long-term viewpoint and perception is seen as an initial impression that one holds toward objects, events or other people.

By accepting the assertion that feelings, beliefs, attitudes and values are manifestations of racial perspectives, the salient components of the manifestations of racial perspectives can be deduced. By way of deduction, then, it appears that (1) what the group feels (affectation) and (2) what the group thinks (cognition) about objects, events and/or other people are of paramount importance. Accepting this premise, it is possible to construct a typology of racial perspectives using equality or subordination of cognition and affectivity⁴⁴ (See typology I).

⁴⁴ See Rogers' Internet article on "Experimental Learning", <http://tip.psychology.org/rogers.html>.

TYPOLOGY OF RACIAL PERSPECTIVES

COGNITION	
AFFECTIVITY	
Yes	No
1 C-A	<u>2</u> C- A
3 <u> </u> C-A	<u>4</u> C- A

The *first type* of perspective, C-A, shows that neither cognition nor affectivity assumes primacy.

The *second type* of perspective, C- \bar{A} , shows that affectivity is relegated to a state of subordination while cognition is elevated to a state of superordination.

The *third type* of perspective, \bar{C} -A, indicates that cognition is relegated to a state of subordination and affectivity is elevated to a state of superordination.

The *fourth type* of perspective, \bar{C} - \bar{A} , is an empirical impossibility.

From the above, the following conjectures are offered:

1. C- \bar{A} represents the White Perspective.
2. \bar{C} -A represents the Mythical Black Perspective.
3. C-A represents the Actual Black Perspective

THE WHITE PERSPECTIVE (C-A)⁴⁵

The white perspective is defined in terms of the relative weight assigned to cognition and affectivity. From the above, the *second type* most clearly defines the white perspective showing a tendency for whites to downgrade affectivity while elevating cognition. In formal settings, there is little doubt that whites tend to assign greater weight to cognition than they do to affectivity. The literature is replete with examples of the value whites place on cognition. Educational institutions from grade school through the university bear witness to the extreme importance placed on cognition by the dominant group in the society. Going back to the "whiz kid" of the 1950s, and current TV quiz programs such as "Jeopardy" and "Who Wants to be a Millionaire", the dominant group's fascination with cognition is well established.

Moreover, in schools, children are taught to pass tests.⁴⁶ (5) Performance is evaluated in terms of the student's ability to remember facts and figures and to give them back to teachers in response to thought questions. Intelligence is determined through I.Q. tests. Admission to college is related to scores on the Scholastic Aptitude Test or ACT. Admission to graduate school is related to the score made on the Graduate Records Examination. And, of course, students must take and perform satisfactorily on the LSAT to enter law school. Upon completing college, one must take and pass a State Teacher's Certification Examination to gain employment as a public school teacher. To secure

⁴⁵ Care must be taken in discussing this topic because it is easy to overgeneralize based on limited or faulty data. We recognize that some whites are more affective than blacks and that some blacks show a greater tendency toward cognition than many whites. While the view presented here is hypothetical, it is based on nearly 40 years of experience in studying black/white relationships. For a stimulating discussion on white and black perspectives see Na'im Akbar's "Our Destiny Authors of a Scientific Revolution" @ www.mindpro.com

⁴⁶ See Jencks, C. and Meredith Phillips (1998) *The Black-White Test Score Gap*, Brookings Institution Press for a discussion on black-white test scores.

work with the federal government, one must take and pass the Federal Service Entrance Examination. Medical school applicants are told that character references will not help and may jeopardize their admission. Only letters of teachers who can evaluate their cognitive skills are solicited. While there are exceptions to this general rule, the exceptions prove the fact that cognition is valued over affectivity. Finally, graduates of law schools generally must pass state bar examinations before practicing law.

The socialization of the young into this system requires strict discipline and the creation of a "mind-set" capable of handling very detailed and finite data. Moreover, a premium is placed on the ability to weave together disparate points of view into a systematic whole. Consequently, this perspective appears to manifest itself in people who are fractionated in the manner by which they approach phenomena. This perspective prefers to train the young to be predictable and narrowly productive rather than spontaneous, enigmatic or holistic.

The white perspective, up to this point, has been treated only in a formal setting. In informal settings, it is clear that whites are not simply cognitive machines. Their feelings are quite apparent. In fact, one could safely say that, informally, many whites act in a manner equating the affective and cognitive domains. The problem is, as afore stated, white society in general subordinates affectivity in formal relationships.

THE MYTHICAL BLACK PERSPECTIVE (\bar{C} -A)

A discussion of the black perspective requires the utilization of the two remaining types of perspectives. The \bar{C} -A may be interpreted to be the mythical black perspective.

It elevates affectivity to a state of super-ordination and relegates cognition to a state of subordination. This perspective, however, is not adequate to explain the perspective of black people. The major fault with this perspective is that it assumes that black people are "non-thinkers." This perspective assumes rather that blacks are simply "soulful" (feeling) people. While black people do appear to demonstrate more affective development than whites, they also share impressive cognitive skills. For example, the survival of black people in this country, especially in the South, necessitated an elaborate cognitive style. The old Negro spirituals sung during slavery time were obvious indicators of an "affective people," but by the same token, however, these spirituals were part of an elaborate cognitive communication network developed and implemented by the slaves, to spread words of revolt, without being detected by the slave master.

THE BLACK PERSPECTIVE (C-A)

When "black" precedes perspective, reference is being made to a particular viewpoint of black people. This particular viewpoint stems from the cultural, social, moral and philosophical determinants of behavior mentioned earlier. Hence, the discussion concerns the collective, or general viewpoint of blacks about given objects, events, or groups of people⁴⁷.

This point of view grew out of the unique experiences that blacks have witnessed both in Africa and America (Sanders, (7)). These unique experiences, slavery, race, and class oppression and the severance of blacks from their past have produced a people who ostensibly:

⁴⁷ Olusegun's (6) work on the problems of self-definition in African philosophy is an interesting piece. It tends towards Afrocentrism, but nevertheless, it makes a contribution to the present discussion.

.....adapt rather than adjust; believe more firmly in morality, religion; hope and pray for the brighter day; accommodate rather than assimilate; integrate rather than liberate; cooperate rather than compete; defend rather than offend; react rather than act; be defined rather than define; be responsive while others remain neutral; repress rather than suppress or oppress; be gradual about change rather than speed up change (Sanders, 8, p. 4).

According to Feagin et al. (9) discrimination produces a sense of alienation in its victims leading to marginalization and dehumanization, “which in turn can have serious physical and psychological consequences (10). The authors then go on to write, “In various accounts, African Americans see themselves as “outsiders” excluded from recognition, important positions, and significant rewards in predominantly white settings.” Outsiders have to develop coping skills to survive in an environment that constantly disaffirms their worth. The coping skills may demonstrate a high degree of cognition but require emotionally charged role-playing in practice. For example, a black person might be an “Uncle Tom” by day, but a fierce fighter for racial justice by night or when he is away from the “insiders.” The coping skills are calculated to deceive.

Moreover, and this is the crux of the matter, the black perspective appears to be an outgrowth of a combination of the affective domain and the cognitive domain such that the two share equally in the development of the person. This appears to be true for formal relationships of black people as well as for informal relationships. The black perspective appears to be holistic in nature; inductive learning appears to loom large and

its model of excellence appears to be a COGNITIVE-AFFECTIVE model. It appears to recognize and accept the strengths of both domains and allows one or the other to take primacy depending upon the situation the individual is in.

As stated earlier, the black perspective appears to be holistic in nature. Thus, blacks appear to be more interested in looking at phenomena from the broad perspective and working from the broad perspective back to the specific. It does appear, however, that black people approach phenomena first with the question: How do I feel about this globally defined object or event? Once that has been determined, they then attempt to analyze it. The analysis, however, appears to begin with the object as a whole and works back to the most minute part. In light of this discussion on racial perspectives, we will now analyze the different views held by whites and blacks in the O. J. Simpson trial.

If it doesn't fit, you must acquit.

Studies show that minority group members are distrustful of and less confident in police and court officials than majority group members (Schumann, et al., 1997; Huang & Vaughn, 13; Garofolo, 14). The reasons for this are various including issues of racial profiling (Cole, 15; Kennedy, 16), excessive use of force among police (Worden, 17), and harsher sentences among judges for drug crimes (Stuntz, 18). These issues boil down to one thing: minority group members feel that criminal justice officials do not respect them.

Recall that determinants of behavior are manifested in feelings, beliefs, attitudes, and values that people hold toward other people. An understanding of minority group members' racial perspectives regarding justice begins with the knowledge that they

believe the justice system is unfair. This belief is borne out in the present study. In fact, it may be the most important finding in the study. It is not a single issue that shapes perceptions of minority group members that justice in America is less certain for them, but, rather, the cumulative impact of several issues over time.

Samuel F. Yette, (19), a noted scholar, wrote an article entitled: *O.J. and the Judicial Hangover: Modern Lynching of Black Men*. Our interest in the article centers on Yette's perspective that the justice system treats white offenders differently than it does black offenders. As stated above, this is a typically held view by black lawyers, judges and law students alike. From the title of Yette's article, it can readily be seen that his view is in sharp contrast to that of the white media's coverage of the verdict. Yette begins by pointing out the fact that a jury found O. J. not guilty, but some judges disregarded the fact that Simpson was afforded due process and accused the jury of "bringing shame to the judicial system." These are strong words, but they are met with equally as strong words from those involved in the trial as well as those covering it. We titled this section, "If it doesn't fit, you must acquit," after Cochran's now-famous quote to the jury because we feel it summarizes Yette's view. To the readers of this manuscript, including court officials and anyone merely interested in justice, our intent is to explain the O.J. case through cultural eyes, not altogether familiar to most whites. This takes us to the Yette piece (p. 5a).

So the jury found the Hall-of-Fame football star not guilty
of double-murder. Since then, the ill-fits—Geraldo Rivera and

much of the white world—have suffered diminished regard for American jurisprudence.

Exclusively, though more than most, Rivera's television career has become an effort to do in his studio what the prosecution could not do in the courtroom: convict O.J. Simpson. Unfortunately, disregard for due process has also afflicted some judges who shame the idea of fairness and sobriety.

Despite his acquittal, and in addition to the 16 months he was in jail, Simpson is still condemned in the court of white public opinion and is now in civil court defending a wrongful-death suit brought by the families of the victims.

But the punishment meted out to Mark Fuhrman, the racist cop on whose lying critical evidence was based, fits like a mosquito's romantic plans for an elephant.

In a Los Angeles courtroom two weeks ago, the hastily retired cop finally admitted his lying by pleading no contest to charges of perjury—a felony that could have gotten him four years in prison.

What he got, however, was a major dislocation of justice: a \$200 fine and three years of probation. In Los Angeles, that sounds more like an Honest Cop of the Week Award.

But Fuhrman also got time on ABC's "Prime Time Live" to repaint reality—to amend and extend his remarks, as they say in Washington.

Simultaneous with the Honest Cop Award to Fuhrman, a federal judge in Los Angeles released from prison two cops involved in the brutal beating a pack of Los Angeles policemen gave Rodney King in 1991.

Even after the video-taped beating had been shown to the world, four obvious cops charged in the beating were acquitted of brutally beating King. That acquittal sparked three days of deadly rioting and prompted federal charges of violating King's civil rights.

Found guilty on the latter charges in 1993, officers Stacy Koon and Laurence Powell were sentenced to 30 months in jail—not the 70 to 87 months prescribed by federal sentencing guidelines.

Last June, the U.S. Supreme Court sent the case back to U.S. District Court Judge John Davies and ordered him to reconsider why he ignored the sentencing guidelines in the first place.

But Judge Davies demonstrated how topsy-turvy racism has turned the court system. He rejected the high court's intent,

refused to add any time to the 30 months the two cops had already served and set them free.

Judge Davies had already protected the two from possible abuse in prison by giving them special arrangements. That helped Koon amass about \$10 million from book sales and contributions from supporters. Still, the judge also rejected prosecution motions to fine each man between \$6,000 and \$60,000.

And, now, Mark Fuhrman uses ABC News to tell millions of readers about his big book coming out next spring. Whatever the title of this and others of the genre, they should all be lumped in an anthology by racist cops and judges and subtitled: “The Modern Lynching of Black Men for Fun and Profit.”

That part, finally, would at least approach the truth.

Relating Yette’s Article to Justice

How does one explain Yette’s charge that the jury did its job in rendering a verdict based on the evidence as they saw it and the negative reaction of whites like Geraldo Rivera to the verdict? Yette’s analysis of the case is cultural in nature. The mostly black jurors understood O.J. Simpson’s case from the larger picture of racial injustice in America. We call this view a “group-centered” view of justice, which is close to being an anathema to whites who value the rights of the individual, a view we call an “individual-centered” view of justice. Each group believes in equal justice under the law and while blacks call for group-centered justice, they recognize the role the

individual plays in the justice process. Both groups believe in a fair trial without regard to religion, race, color, creed, etc. Where the two depart is something Holden (20) pointed out nearly three decades ago, i.e.: much of what blacks hold as core values,⁴⁸ shaping the view of justice in America, derives from the struggle against white domination.

Hunt, Howard and Bishop (22) wrote about the core values as follows:

Embedded in these core values are patterns of group activity.

Holden mentions authoritarian leadership, clientage tendencies, and preoccupation with verbal interchanges. Similarly, the students of black music stress group improvisational, call and response, and rhythm as black cultural patterns. Leaders tend to be charismatic and committed while personal or individual rights are sacrificed for group unity, or else more compatible splinter groups get formed. These patterns contrast with both orderly pyramidal bureaucracies derived from Max Weber, and the Hawthorne Studies' informal organizations.

Justice is an organized effort by society to keep the peace. The history of blacks in dealings with organized efforts in American society has yielded group slavery, not individual slavery, group discrimination, and not individual discrimination. If the latter in each case had been true, blacks would no doubt be much more inclined toward

⁴⁸ For a detailed discussion on values that distinguish black culture from Anglo Saxon culture, see Hunt, et al. (21: 45-46) where the core values are as follows: Hope for Deliverance (for the race); Wish for Defiance (a deep desire to respond in kind to whites for pervasive insults and humiliations); Dionysian Individualism (preferences that run contrary to the status quo); Moralism (the articulation of the rightness of black causes); and Cynicism and Fear (hope for deliverance and the wish for restitution but fear that the goal is not attainable).

individual rights because there would be no history where they were treated any differently than other groups. The unique experiences of slavery and discrimination of blacks as a group in America have fostered “a fundamental ambivalence about organizational membership, particularly when the organization is perceived as dominated by white values” (23). What Hunt, et al. wrote about in the 1970s, James Weldon Johnson (24) wrote 40 years earlier.

There is in all of us (blacks) a stronger tendency toward isolation than we are aware of. There comes times when the most persistent integrationist becomes an isolationist, when he curses the white world and consigns it to hell. This tendency toward isolation is strong because it springs from a deep-seated natural desire—a desire for respite from the unremitting grueling struggle, for a place in which refuge might be taken. We are again and again confronted with this question.

To be sure, some blacks view justice in individual terms, but the larger number recognizes the “unremitting grueling struggle” that blacks have faced in seeking equal justice in America. Historic group experiences have shaped blacks’ group-centered justice perspective every bit as much as the individual-centered justice perspective experiences of Euro-Americans shaped theirs. Turning again to the discussion on the O. J. Simpson trial, by Yette, some might feel that he was not a detached professional observer, but rather that his work was too emotionally charged and biased.

Yette's view might be dismissed because "it's too emotional" or simply biased, but to reject what he is saying on this ground is to miss the larger point he is making as to why blacks perceived the American justice system to be unjust. Moreover, the Simpson trial revealed that both whites and blacks registered opinions emotionally charged by race. Yette understood that the mostly black jurors still had fresh memories of justice going amuck, especially where black male defendants were charged with crimes involving white women. As such, it was not hard for him to believe that the jurors believed the defense attorney's argument that white policemen planted evidence, thus framing Simpson because police had been known to do so in the past.⁴⁹ Moreover, the treatment Furman received at the hand of the judge as well as Stacy Koon's and Laurence Powell is treatment added to Yette's perception that there is one standard of justice for whites and a harsher standard for blacks. Supporting this view, Abu-Jamal (24) has written:

In the 1987 case *Mcclesket vs Kemp*, the famed Baldus study revealed acts that unequivocally proved the following: (1) defendants charged with killing white victims in Georgia are 4.3 time mores likely to be sentenced to death as defendants charged with killing blacks; (2) six of every 11 defendants convicted of

⁴⁹ No less a figure than Supreme Court Justice Stevens has stated that minorities and people living in high crime neighborhoods "believe that contact with the police can itself be dangerous". (See *People v. Wardlow*, 120 S. Ct. at 680-Stevens concurring in part, dissenting in part). A concrete example is taken from a 1996 shooting in Miami, Florida, where a police officer, Jesse Aguero, fired at a purse-snatcher named Steve J. Carter. According to Aguero, Carter pointed a gun at him. Carter was not injured in the case and insisted that he didn't have a gun. There was a gun found in the vicinity, but it did not belong to the suspect. The gun had been seized in an earlier drug raid conducted by the shooting officer, Aguero. The "throw-down" gun, though connected to Aguero, was not enough to convict him of a crime. To the contrary, a Miami police review board cleared Aguero. Today, Aguero and 12 other past and present Miami police officers are under federal indictment for allegedly planting weapons at crime scenes to cover up shootings of unarmed suspects.

killing a white person would not have received the death penalty if their victim had been black; and (3) cases involving black defendants and white victims are more likely to result in a death sentence than cases featuring any other racial combination of defendant and victim....

Does this mean that African Americans are somehow innocents, subjected to a set-up by state officials? Not especially. What it does suggest is that state actors, at all stage of the criminal justice system, including slating at the police stations, arraignment before a judicial officer, and pre-trial and sentencing stages before a court, treat African-American defendants with a special vengeance not experienced by white defendants.

This is the dictionary definition of ‘discrimination.’

Further witness of “discrimination” in the criminal justice system comes from Stephen Harper. Writing about juvenile justice in the U.S., Harper (25) says: “Black and Hispanic children are disproportionately affected at every point along the way: in numbers arrested, charged, convicted, transferred to adult court, imprisoned and, ultimately, sentenced to death.” As the current study has pointed out, the hard, cold facts tend to suggest that blacks do not fair as well as whites in the criminal justice system, whether at the juvenile level or the adult criminal division. We believe this reality came to the forefront in Yette’s analysis of the O. J. Simpson case. Most whites simply had not experienced the darker side of the criminal justice system as had blacks. The oldest of

the authors of the current work remembers when he was a child that the local policeman was pictured in textbooks as a friend in the community, but to the black community where he lived, the local policeman was feared because he was seen as a protector of the white community.⁵⁰

Supreme Court Loses Some Luster

Now consider the most recent presidential election between Al Gore and George Bush. During this election, blacks exercised their civic responsibility as citizens voting for the man they thought would best lead America into the new millennium. Their hopes were dashed when the Supreme Court expropriated (Bell 26) the Presidential election. Yale professor and constitution law scholar, Bruce Ackerman, had difficulty believing the highest court of the land would stoop to the level of politics in a ruling that meant so much to the country and especially to blacks who had pinned their hopes on the Democratic party to help maintain civil rights gains won through hard-fought legislative and court battles.

Bell (26) quotes Ackerman as follows:

We are not dealing with the normal disagreement on principle that attends every important Supreme Court decision. Justice Stevens is saying that the majority's decision to halt the Florida recount is a blatantly partisan act, without any legal basis whatsoever....

⁵⁰ In the recent November 2001 elections, Miami, Florida's voters approved a referendum establishing a police community oversight board with subpoena power to stem a history of brutality against blacks including cover-ups of shootings where guns were proven to have been "*throw downs*."

After a careful study of the Court's opinion, I have reluctantly concluded that Stevens is right. I say reluctantly because this view goes against the grain of my entire academic career, which has been one long struggle against the slogan that law is just politics.

We believe most Americans believed, as did Ackerman, that the Supreme Court was above mere politics. Some Americans, including many blacks, while holding to the general view that the Supreme Court was aboveboard in its work, knew from experience the court's darker side. Blacks, for example, knew the court's tendency to act on behalf of whites as indicated above. Moreover, the Supreme Court ruling in 1895 affirming the constitutionality of the separate-but-equal doctrine consigned a whole race to second-class citizenship. The bitter experience of more than 50 years of legal segregation blacks faced following that decision diminished the courts in their eyes. The hope for justice among blacks, however, never waned. The courts gained in status during the Warren Court years. Here we find the Supreme Court acting in agreement with the group approach advocated by blacks. The Court's action was based on a correct premise that government had discriminated against blacks, not as individuals though each person suffered as an individual, but rather as a group or race. As such, *group wrongs* were made right in the Supreme Court's ruling in 1955 in *Brown v. Board of Education* that separate was not equal and in the 1960s where Civil Rights laws were upheld. Most of the gains won by blacks came under the Democratic Party during the Johnson administration.

Under Republican Party rule, Nixon, in 1969, appointed a more conservative chief justice. The Burger Court began the process of rolling back gains in affirmative action,

which continued under the current Rehnquist Court until the present time. Clearly, the Supreme Court has shifted back to a focus on individual rights. In the process, hard earned civil rights gains won by blacks have begun to diminish. As such, the high court has diminished in the eyes of blacks.

With this background information, let us now look at the most recent election between Bush and Gore. While not all blacks agree with the sinister view of the Republican Party painted by Bell in his analysis of the recent Bush vs. Gore presidential election, many felt disenfranchised. Bell (26) has written:

I doubt that very many people would dispute that the Republican vote by working class whites was based in substantial part on the belief that the party would better protect them against inroads by minorities. And why not? While feigning interest in black voters, the Republican Party has come to power by parlaying the willingness of whites to blame blacks for the nation's ills and their own anxieties.... Republicans have hidden their massive redistribution of the wealth upward by gleefully cutting social programs while assuring whites that they were restoring the racial balance through their opposition to affirmative action and their all but open hostility to black people.

Strauss (27) does not go as far as Bell in criticizing the court's action, but he does wonder, "What were they thinking?" Strauss' view of the Supreme Court boils down to politics. He has written (p. 738) "that several members of the United States Supreme Court were convinced that the Florida Supreme Court would try to give the election to

Vice President Gore and would act improperly if necessary to accomplish that objective.” According to Strauss, the highest court in the land believed the Florida Supreme Court to be political and that it must be stopped. Strauss suggests that the Supreme Court in overturning the Florida Supreme Court acted upon its belief that the Florida Supreme was seeking to give the election to Vice President Gore. Supreme Court.⁵¹

Turning again to the O. J. Simpson trial, and continuing to look at the big picture, it is our contention that the jurors were faced with a question of whether the defense’s position was believable or not. We concur with Yette that the mostly black jurors weighed the evidence, albeit through cultural eyes, while most whites judged the case based on its individual merits. As pointed out above, these divergent views call attention to the racial chasm between blacks and whites, which is best understood as a cultural divide between the two. We believe that the cultural divide helps to explain the different responses by blacks and whites when the verdict was announced.

The spontaneous jubilant reactions of many blacks upon hearing the *not-guilty* verdict was as much an expression that they agreed with the jurors as was the case that, at last, in the U.S., a black man accused of a crime against a white woman could win a case in a court of law. This is ironic, however, because many whites felt the government was on the side of blacks due to its backing of affirmative action programs. On the other hand, most blacks felt equally as strong that whites were unrelenting in their quest to keep blacks from economic parity, and that whites’ opposition was another form of oppression. To whites, a gross miscarriage of justice had taken place. To blacks, the

⁵¹ In January 2001, 585 law professors signed a public letter attacking the Supreme Court’s decision in the Gore v Bush case as devious and hypocritical judicial activism (See David Zweifel, *Court Decision Still Rankles Law Profs*, Cap Times 6A (Jan. 24, 2001)).

feelings whites registered toward the mostly black jury, and blacks' jubilation after the verdict was read, was consistent with an established pattern of racial prejudice.

The chasm continued between whites and blacks in the civil trial of O. J. Simpson. In the civil trial, the judge took a hard line on seating possible jurors; he refused to accept excuses that might have been accepted by other judges. Whites maintained their fixed opinion that O. J. was guilty while blacks acknowledged their belief that he was innocent. *The U.S.A. Today* (28) reported the following regarding the trial:

Most analysts thought a jury wouldn't be seated until mid-October. Fujisaki had hoped it would take two weeks.

Almost all the jurors who have reported to court over the past week have expressed strong views on the killings of Nicole B. Simpson and Ron Goldman on June 12, 1994. Simpson was acquitted last year of the slayings but faces a wrongful death lawsuit by the victims' families.

Reflecting national polls, the opinions break down along racial lines. In court Wednesday a black man told Fujisaki the Los Angeles police deserved to lose the case because the cops botched the investigation. "That's what they get for jumping the gun," he said.

A white woman said she believed Simpson was probably guilty because he was the only one arrested for the crime. "I don't want him to be (guilty)," she said. "But when I don't see anything more forthcoming, what else can I believe?"

But experts question whether people can change strongly held convictions – especially when they are framed by the emotional issue of race.⁵²

Lawyers, judges and law students are not immune to fixed positions on matters of justice. Just as religious people hold strong feelings about what they believe, and whites and blacks hold strong feelings about innocence or guilt in the O. J. Simpson case, the subjects of this study also have strong feelings regarding the law. Some believe that the law must be interpreted literally; while others, with equally strong feelings, believe it should be interpreted with an eye toward social activism. The Warren Court, for example, is said to have been a liberal court while the Rehnquist Court is said to be conservative. These two courts represent fixed positions of men and women who are not likely to change their fundamental opinions about the law any faster than whites or blacks holding fixed positions about the Simpson case. That men and women hold fixed positions as to how the law should be interpreted is not the same thing as how the justice system adjudicates cases. Insofar as how justice is administered, there have been positive changes.

Positive Steps

Large caseloads and rising costs are twin problems that have led to changes in how certain court cases are handled. For example, in 1989, Miami-Dade County, Florida, opened the first “drug court” to address the problem of recidivism among non-violent drug offenders. Rather than locking up defendants accused of drug crimes and throwing

⁵² O. J. Simpson was found guilty in the civil trial and ordered by the court to pay restitution to the victims families.

away the key, Miami-Dade County drug court innovated the concept of long-term judicially supervised drug treatment. This allowed judges flexibility to monitor the behavior of the addicted defendants and to provide correctives as needed. Other states have followed Miami-Dade County's lead. Today there are a number of problem-solving courts trying new approaches to cases once thought difficult (Feinblatt, et al. 29). New York State Chief Judge, Judith Kaye, in writing about how drug cases are adjudicated has written:

....the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protective order, goes home and is beaten again. Every legal right of the litigants is protected, all procedures followed, yet we aren't making a dent in the underlying problem. (Kaye 30)

Just as traditional views are being challenged in processing cases in state courts, justice officials are rethinking some deeply held perceptions toward African Americans. For example, the United States Department of Agriculture (USDA) in *Pigford v. Glickman* (31) offered to settle the largest civil rights case in U.S. history brought by black farmers who lost their lands due to USDA policies that discriminated against black farmers. While not all black farmers agreed to a \$2.25 billion settlement, it is a forward step. Mitchell (32) has written: "Just as the USDA and its county agents systematically discriminated against black farmers for decades, driving many of these farmers out of business, meaningful reform must be just as systematic and far-reaching." Mitchell goes on to say (33):

Simply allowing the members of the *Pigford* class to collect limited damages will do next to nothing to ensure that black people will have the opportunity to participate as producers in the agricultural sector of the economy during the next century. The moral imperative to redress fundamental acts of injustice applies with equal force to those thousands of rural black landowners who lost their lands due to the unethical, sometimes illegal, practices of white attorneys and land speculators who have used the rules governing partition actions as a lever to force the sale of black-owned land.

Policymakers must take an organic approach to restoring meaningful ownership for rural African Americans. Such an approach requires at least the three following elements: land, consolidation and restoration, and community legal education. Furthermore, both the state and federal government must develop policies directed at these three ends.

Not too long ago profiling, identifying suspects based on preconceived notions of what a criminal might look like, was a routine practice by some law enforcement officials in the U.S. This practice discriminated against African Americans and other minority groups. Today it is against the law to profile on the basis of race. This too is a step in the right direction, but more needs to be done.

Court officials will be better able to perform their jobs if they possess an understanding of culturally different offenders, which is the goal of the current training. The analysis of the data in the current study uncovered some views that run contrary to the known facts as outlined in this study. The following section presents training materials aimed at building cross-cultural understanding. Our goal is community building where inclusion is the outcome. Consider the training section with openness of heart and mind. In doing so, you will get the most out of the training materials.

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Chapter 2

Administration of Justice Training: Looking for Akili

In this series of exercises, the student is to find Akili. Akili is not a person, but rather, a way of thinking. In the African language, Swahili, Akili means clever, intellect, and wisdom. This exercise celebrates knowledge in the field of justice. The *New World Dictionary* defines Justice as follows: 1.) being righteous, 2.) fairness, 3.) rightfulness, 4.) reward or penalty as deserved, 5.) the use of authority to uphold what is just, and 6.) the administration of law.

When thinking about justice, consider what is righteous or fair. Take note that what is fair or right is not universally agreed upon. Most societies define justice to mean, “reward or penalty as deserved,” including “the use of authority to uphold what is just,” definitions # 4 and # 5 as set forth above. In definition #5, “*just*” is defined normatively. It is closely related to the last definition related to the administration of law. The administration or execution of law is also normative. Justice in this sense is the execution of laws based on what the people agree to be right or wrong. In other words, there is no universal “right” or “wrong.” For example, in some Muslim countries, a woman in public must cover her head. If not, the law allows for severe punishment. By contrast, in the United States and in many other countries, the law prohibits discrimination against women. If the woman chooses to wear a head covering, it’s her right under the law, but if she chooses not to wear one, it is also her right under the law.

As stated above, Akili is not a person, but a way of living. In the culture of Akili, right and wrong are not left to question. Hunt () has written elsewhere:

Your may ask: What is good and right? I will not argue about man's philosophical notions of relative rights and wrongs. I am challenging you to tell me if it is wrong 1) for a man to rape a woman, 2) for a young person to kill a sixty-year-old to prove he's "a man," 3) for a young woman with AIDS to knowingly have unprotected sex, 4) for sisters and brothers to torture their parents, 5) for a cult leader to brainwash young men and women to follow him in his beliefs, 6) for the man who breaks into his neighbors' home and steals their life savings because he doesn't want to work, and 7) for a person to accuse a preacher of molesting a two-year-old child knowing it is not true.

These are crimes we see day in and day out on our T.V. screens. Are we as the callous fools who say they do not know whether it is right or wrong to do these things?

Akilians respect the rights and ways of life of others; they give honor to whom honor is do; they are trustworthy; their values include caring, sharing and loving; and they are inclusive in their community building efforts. For Akilians, justice that is impartial, evenhanded, honest, and respectful of persons is called ethical. Decency adds virtue to the definition where prudence, temperance, integrity and mercy can also be found. In the culture of Akilians justice, then, is an ethical statement of *just* people administrating *just* laws.

As you read the following scenarios, keep in mind that our focus is not on whether the law was upheld, but rather, whether Akilian justice has been rendered. You

have space under each scenario to express your thoughts. You may agree or disagree with the position taken in the scenarios. We are interested in your reason(s) for the position taken. We appreciate honesty in your responses as well as brevity.

**Black v. Pass County Board Of Education:
When Desegregation Leads to Resegregation.**

School desegregation is a Fourteenth Amendment right under the Constitution. The Constitution states “no state shall deny to any person within its jurisdiction the equal protection of the laws.” The Supreme Court ruled in 1955 in Brown v. Board of Education of Topeka that separate was not equal. The Court ruled that separate educational facilities for different races are inherently unequal and that federal courts were empowered to eliminate all vestiges of state-imposed segregation.

Pass County, Florida, falls under the federal desegregation decree of the Supreme Court. Like many school districts, it established a magnet program to attract white students to its inner city schools. The board of education established no geographical attendance base for its magnet program. It did, however, cap the enrollment at 50% for any particular race. The enrollment for black students reached the 50% max in 1995, two years after its inception. Each year since 1995, the magnet program has been under capacity by an average of 300 students.

During the 1999-2000 school year, concerned parents and students protested Pass County’s admission policies on the basis that the policies discriminate against black students, and therefore was unconstitutional. Failing to resolve the dispute led to a court action requesting that the decree be dissolved. The Pass County School Board fought to keep the decree alive. Did the school board do the right thing?

Response:

Fatally Shot While Attending School: Accountability, Responsibility

On January 11, 1998, Shawna Willis shot and killed two students while attending school in Pass County, Florida. Prior to the shootings, one of the school's counselors believed that Shawna was experiencing mental problems and at least one teacher had reported irrational behavior on Shawna's part. Shawna pled guilty but mentally ill to the killings and was sentenced to 20 years in prison without the possibility of parole.

The parents of one of the fatally wounded students sued the school board and Shawna's parents in civil court for \$5 million in compensatory damages and \$50 million in punitive damages. It was alleged in the suit, that educators, board members and Shawna's fellow students alike were aware of Shawna's problem. The suit alleged that on at least two other occasions before the fatal shootings, Shawna had brought a gun to school. Depositions from five students indicated that Shawna had brought a gun to school. One deposition, by Water Drink, indicated that three days before the fatal shooting, Shawna had threatened to kill the students.

Teachers knew of Shawna's tendency to act up in class. Under pressure, Shawna would go into a shell, but, if pressured further, she would respond in a wild manner, sometimes with violent outbursts, but she never harmed anyone. At least one counselor was aware of the situation, having spent time counseling Shawna for the violent outbursts.

Following the filing of the suit, the judge dismissed the case. Under the laws of the State of Florida, the judge ruled that school boards and by extension, teachers, could not be sued because they were protected by sovereign immunity. As a matter of justice,

Free Speech or Not

Free speech is cherished in American society. This is true perhaps nowhere greater than on college and university campuses. Of late, however, First Amendment speech rights have come under greater scrutiny within the academia. The Supreme Court has waded into the murky water of balancing the rights of teachers, as citizens, and the university, as employer without establishing a clear balance between the two.

In 1998, Pass County State University refused to grant tenure to an outspoken black employee by the name of Spoken Truth. The employee had taught history at the university for five years prior to her dismissal. Each year, students gave Spoken Truth above-average marks during class evaluations. She was well-liked by other members of her department and was recognized for outstanding community service on at least two occasions during her tenure at the university.

The reason given by the president of Pass County State University for not granting Truth tenure is that she failed to meet “the university’s quality standards” Ms. Truth contends that she was fired because she publicly spoke out against the president’s lack of senior-level black appointees, which led to demonstrations by the black community against the university.

The Board of Trustees of Pass County State University reviewed Ms. Truth’s case and decided that the denial of tenure or the failure to promote would have occurred anyway even if the demonstrations had never occurred. How do you explain the tenure decision?

Sexually Harassed

In 1996, Mary Willing attended a conference with a senior executive of one of the largest companies in Pass County, Florida. The executive was accused of harassing Ms. Willing. According to Willing, Johnny Ready, the senior executive, made a pass at her during a reception and she politely brushed him off. Later, however, as she was preparing for bed, Ready knocked on her door, and she, thinking it was a hotel employee, opened the door and Ready rushed in.

Willing, upon returning to work, reported the incident to her supervisor. According to Willing, Ready groped her, and again she politely brushed him off and asked him to leave. Ready then suggested to Willing that her career would be furthered by her cooperation. Willing then said that she emphatically told Ready that she had no interest in him sexually and that if he did not leave, she would call the front desk. After a little while, Ready left her room.

Three weeks after reporting the incident to her supervisor, Willing found herself on the wrong end of a lawsuit filed by Ready. The case was heard by a jury, which found Willing liable to Ready for \$2 million. The award, however, was thrown out on appeal. How can such a thing be?

Response:

I Don't Have a Prejudiced Bone in Me

In 1997 Roberta English filed a discrimination lawsuit against the Pass County, Florida School Board. Roberta interviewed for a job in one of its better elementary education programs. Roberta held a MA degree from a well-known local university. The interview panel refused her on the grounds that she was not qualified to hold the position.

During a restroom break, Roberta heard two interview panel members discussing her qualifications unbeknownst to them. The panel members agreed that Roberta had good references, good grades, and she was highly articulate. In fact, one of the panel members said that she was the best candidate they had interviewed. In spite of their feelings, the two panel members sided with the others to make it a unanimous job refusal.

In the hearing, Roberta's lawyer made the point that the only reason Roberta did not get the job was due to the color of her skin. The attorney alleged that in the history of Pass County, Florida, there had never been a black teacher hired to teach in their elementary education program in that particular school. Roberta's attorney also brought up the conversation between the two members of the interview panel in the restroom. When the two panel members learned that Roberta had overheard their conversation, they refused to acknowledge that they had it. Roberta's suit was rejected. Share with us your thoughts on this case.

Response:

Interview with Dr. W. S. M. Banks

The researcher's interview with Dr. W. S. M. Banks, retired sociology professor at Fort Valley State University is revealing. Dr. Banks was in his early 80s at the time of the interview but still had a sharp mind.

He related to the researcher his thoughts on justice in the United States. Among the things he said is that: "The whole matter of justice has been a concern all of my adult life, particularly as I have seen and witnessed in one way or another variation in the administration of justice."

He then asked, "Lord, how long will I have to wait for equal justice?" The researcher asked whether equal justice was possible, and he answered: "Yes, it is possible because all things are possible. I think that it is possible, but, in the foreseeable future, it's probably improbable in America."

The researcher then asked Dr. Banks to respond to the following statement: **"Justice must not be blind but must be able to see with the clarity of spiritual eyes. The symbol, Blind Justice, must be given sight that she might see the injustice within the justice system."** This is what he had to say: "In a sense you are saying that a person must walk where I walk. He must come out of himself and get into the place of somebody else and react on the basis of that other being and relate that to the Higher Being. To the extent that he behaves in an unbiased manner, after the introspection, to that extent he relates to the higher law."

The researcher probed further, asking Dr. Banks to share an incident in his life that typified equal justice? He told about an experience in 1937 when he was with a camp sponsored by the Church of the Brethren. He said that a white man had threatened to take his daughter out of the camp where Banks was the only black staff person. The camp director told the man to wait a couple of days until visitor's night before making the final decision to remove his daughter from the camp. When the father returned, the young Banks was giving a message on the reasoning behind spiritual songs of African Americans. After Banks finished his lecture, the camp director told the man that he was free to take his daughter, if he pleased. As the man listened to Banks, he changed his mind about his daughter associating with Banks. He told the camp director that he would leave his daughter in the camp. For Dr. Banks, justice was manifested because the point of view of the father had been discredited. The young girl was not denied the opportunity to fellowship with him, which would have been a breach of her and his right to relate to one another as human beings.

Dr. Banks then spoke about injustice. He related a story about a Hispanic who was traveling through Alabama. The Hispanic was stopped for speeding by a white police officer. He was rudely treated and taken to jail. A white person was also stopped under the same circumstance but was treated with courtesy, given a warning and sent on his way.

According to Dr. Banks, justice did not prevail for either. According to him, "The rightness of a point of view must be based on nothing but how the person wants to be treated." For Banks, justice could not be realized so long as the policeman operated under a double standard. In order for justice to prevail, the police officer's thinking would have to be transformed. He would have to learn to relate to all people based on the simple principle: Do unto others, as he would have them to do unto him.

Exercise

While the interview with Dr. Banks did not cover specifics pertaining to the study of law, he raised some interesting points that we would like to probe further with the reader. Bank asked, “Lord, how long will I have to wait for equal justice?”

Response:

Define equal justice.

In your opinion, is equal justice an obtainable goal in America?

In your opinion, is there a higher law to which justice must relate?

Is it possible for justice to be blind and yet see?

Interview with Walter Green

Walter Green is an Assistant State Attorney in Gainesville, Florida. After a few pleasantries were passed, I asked Walter to explain his idea of justice. This is what he had to say:

Being a black assistant state attorney is unique. There are three of us out of an office of nearly 40 attorneys. Much of what we do is prosecute black people. There is certainly a difference in what I see in court and what some of my colleagues see. My idea of justice is different from my colleagues. For example, two individuals of different backgrounds, having been charged with the same offense come before the court; one is black and the other is white. When the sentence is pronounced, the results are sometimes different. Some of the difference can be explained based on prior history, which, to a large extent, determines what happens to people in court. Some is based on what the judge feels about these individuals which is one reason why I am excited to see one of my black colleagues seeking a county judgeship. I think that the judge is the one who determines justice. His perception of the individual before him drives his attitude in sentencing.

I then asked Walter to comment on a civil case that I recently read about in the news where whites and blacks were awarded monetary damage in an asbestos case. Blacks, on average, received nearly \$40,000 less than did whites. I pointed out to Walter that after controlling for all-important variables, the only variable that made a difference in the amount each person received was race.

He said that what I described is the same thing that he had just spoken about. He went on to say: "The only difference was that one was in civil court and the other was in criminal court. To explain the disparate impact boils down to what the juries and the judges bring to the table." Walter went on to say, "So, what I am saying is that the judge and the jury cannot rise above their perceptions in making judgments. If the person has grown up to believe cats are better than dogs, he will favor cats when he has to judge between the two, perhaps not knowing why he is doing so. In like manner, the prejudices of both judges and juries enter into their decisions without their knowledge."

Anticipating my next question, Walter said:

I want to speak about another reason why different individuals get different sentences, and this is, in my opinion, the most important reason. It's because some individuals, white or black, are able to hire very adept attorneys to defend them. The reality is that a state attorney like myself carries a very large caseload. For example, I have over 200 cases in the criminal division that I must dispense with. I also run a drug court, which is a diversion program, with an additional 60 to 70 cases. So you see, I don't have time to spend weeks and weeks preparing on each of these cases. The defendant, however, may hire a very competent attorney who has the time and the money to do the research and investigations necessary to properly defend his client.

I asked Walter whether it was an advantage working out of the State Attorney's office insofar as preparation for private practice as a defense attorney. His answer came as a surprise to me.

He said, "I would say that depends on your reputation and how well you get along with your colleagues. Let's say I really had a rough time here and the people did not like me, and I was in constant conflict with my superiors. That would be a detriment to my clients as a private attorney." How so, I asked? He answered:

Because what it really comes down to is that you can't try all the cases.

Negotiation is part of the system. It's like mediation in a sense. You are really like a glorified case manager. You are trying to manage the 200 cases in a way that suits the public's need and what the individual can live with. The better relationship you have with the state attorney's office, the more beneficial you will be to your clients. If, for example, I were to leave here on less than favorable terms, I am sure that when I try to work something out with the assistant state attorneys, the door would be shut in my face. In other words, my ability to get the state attorney's office to be more compromising will be enhanced to the degree I part company as friends.

Our discussion led to the plight of indigent defendants represented by the public defender's office. My thoughts were that they do not stand the same chance of receiving justice as does one who is able to pay for competent legal representation. Walter said:

The Public Defender's office is the flip side of our office. They have nearly as many cases to manage as I do. They cannot devote as much time to their cases as a private attorney who may only have 10 clients he is serving. With the private attorney, more time is available to the cases. They can pursue more motions or send an investigator out to do some work whereas the Public Defender's office may not have the resources or the money to devote to their cases. As a result, the indigent client comes off second best insofar as justice is concerned.

What about the stress factor - is the job stressful? He answered, "It's funny that you asked that. The job is very stressful but people hide their stress. When you have over 200 cases to manage, the work is, by necessity, stressful." More to the point, Walter talked about the power the state attorney has over the lives of people. He said:

"... the assistant state attorney could ruin a young person's life by going after him in a vigorous prosecution. By sentencing a young person to a long prison term, you determine the course of his life. I have a lot to say about how much time the judge gives by what I recommend to the judge. Usually the judge listens to the state attorney's recommendation especially if it is something negotiated. For example, if a juvenile commits an offense worthy of adult court and he is given a long-term sentence, you know he does not have the experience or ability to escape the fate of such a young one in prison. Yet you must consider that you have a job to do - that the public's interest must be served. The key here is that the official of the court must make sure that he or she is not punishing the person for something that he did not do.

What about minimum mandatory sentencing, how does this fit into your work? Walter responded:

If a person carries a gun and uses that gun, chances are, there is going to be a minimum mandatory sentence. As an assistant state attorney, I have the discretion to tell the judge that we have entered into a plea negotiation, which

really is a fiction, which would say, ‘yes, this was an aggravated assault involving a deadly weapon, but we have negotiated a plea agreement which allows the defendant to plead guilty to a lesser offense without a deadly weapon even though the fact is that a deadly weapon was used.’ It is necessary to do this at times because all crimes are not the same. There are some circumstances where the state attorney could say, ‘I can see how that could happen.’ In these cases I may be more lenient. I try to deal with each case as an individual case.

The interview closed with the following remarks from Walter:

Your study causes me to consider this whole matter of justice. I am looking forward to becoming a judge in Gainesville, Florida, one day. I have seen how judges allow their biases to creep into sentencing defendants. For example, some judges have been known to take the position in sentencing destitute defendants that they do not have anything anyway, and therefore jail may be best for them. The judge may feel he is acting in a benign manner, but his actions deny justice when he allows the bias to creep in his decision. The destitute did have something—he had freedom from being locked up. To lock him up thinking you are doing him a favor is presumptuous at best and cruel at worst. Then there is the other side, where an equal number of judges take the attitude that the destitute person is not responsible for the crime, assuming it is not a major felony. These may actually feel sorry or even guilty that the person is in such a predicament. They are likely to be lenient sentencing the destitute one.

Note!

Walter touched on several variables included in the Administration of Justice study. He affirmed the role race and economic status play in the justice process. In addition, he spoke about how perceptions of judges and juries impact justice.

Exercise

The interview with Walter Green reveals much that is current in the literature regarding justice. The interview points out the personal experiences of a young, black, assistant state attorney. Walter has experienced justice, or the lack thereof, from the position of a minority who must now prosecute other minorities. How is Walter to relate to his situation? Will Walter approach his job in the way other assistant state attorneys do or will his minority status affect his work?

List consequences Walter will likely face if his first loyalty should be the job.

What are likely consequences if he adheres to the belief that his first loyalty should be to the black community?

Walter spoke about the importance of leaving the State Attorney's office with a good record. He indicated the importance of building trust and friendship with other state attorneys. In light of his comments, what role should Walter play when he comes face to face with injustice in the criminal justice system? Would he be wise to acknowledge the injustice but wait until he has power to do something about it?

What about taking an activist role, is that the way to go?

Stress on the job is a big problem in industry. Walter mentioned stress as an important factor in his job. He said the job was very stressful but that state attorneys hide their stress. Why would the attorneys feel the need to hide the stress in their jobs?

How does the fact that they hide it impact the quality of justice? Be specific in your answer.

Walter said that there were not enough black judges in the criminal justice system, which deals with a disproportional number of black defendants. He said that judges play the key role in justice. Moreover, he stated that he wanted to become a judge and was glad another of his colleagues, who also is black, is pursuing the bench. What does Walter seem to be implying by the above remarks?

Interview with N. Albert Bacharach, Jr.

Albert Bacharach, Jr. practices law in Gainesville, Florida. The interview with him was short and provocative, centering exclusively on his view about judges. Albert is clearly not a fan of judges. His bias, favoring lawyers over judges, came through immediately.

Responding to the question as to what motivates a lawyer to become a judge, Albert said: “A person becomes a judge to exert power over others. Very few great lawyers become judges. They do not because they have the ability to negotiate the justice system successfully in economic terms.” He then went on to say, “I question self-appointments in matters of public business.” Self-appointment, I asked? Aren’t judges elected or appointed to office by other duly anointed officials?

He replied:

Yes, it is true that some judges are elected to office, but many more are appointed because they wanted the appointment. The simple fact is people become judges because they want to be judges. There is a flaw in this because people who want to have power over other people become judges to gratify their needs to be powerful. This overriding desire to be powerful colors their ability to be fair in some cases. For example, the judge who is envious of the very successful lawyer may take it out on that lawyer if he appears before that judge. You have to wonder about the people

who get to be judges when salaries are half, at best, what a skilled attorney can make in a year.

Albert asked rhetorically whether judges can be compared to school teachers who go into inner city schools to teach in classrooms with 40 or more undisciplined students whom they cannot spank, albeit spanking is the one important measure their parents use to keep their kids in line, for less than \$20,000 a year? He answered his own query: “No. The teachers are not seeking power over the children. The teachers are acting on a desire to serve. They believe they can make a difference in the lives of the children. While some judges would fit this description, many more are desirous to become judges because of the power they have over the lives of others.”

Interview with Peter Krauthammer

Professor Krauthammer is currently serving on the staff of the Howard University School of Law. He grew up in Washington, D. C., but spent 10 years in Paris, France, between the ages of three and thirteen. Peter came from a middle-class home where his father was a neurophysiologist, and his mother, a histologist. He went to Boston University School of Law with a desire to serve in a public interest field. His preference was to hold a position in law where he could serve the African American community. After completing Boston University Law School, he took off a year, working odd jobs requiring physical labor. Peter said that he had become somewhat disillusioned in what he saw in his third-year, fellow law students, particularly African Americans and other minority group members who came into the university with high hopes of serving the community, but, when the time came for them to finish school, they had lost interest in serving the community as much as they were in favor of getting high-paying jobs.

After a year working odd jobs, Peter applied for a position with the Washington D. C., Public Defender's office. His work in the Public Defender's office began in October 1983 with six-weeks training aimed at honing his advocacy skills. At this point in the interview, Peter began to instruct me as to the uniqueness of the Public Defender's office in Washington, D. C. He said that the six weeks of training distinguished the D. C. Public Defender's office from a lot of other offices that do not do that kind of training. He added that the D. C. office still enjoys a good reputation, albeit sometimes to its detriment, because it is perceived as an elitist institution. He indicated that many of the lawyers in the Public Defender's office come from Ivy League schools with many having served as clerks for Supreme Court justices and federal judges prior to their appointments.

I asked Peter if it took "pull" for him to land the job at the Public Defender's office seeing that he did not have the background of a Supreme Court or federal judge clerk?

His answer was an emphatic, "No!" He said, "At the time I did not know the reputation of the office, which may have helped me with my interview, because I went in there thinking this was like any other public defender's office—thinking that they needed me more than I needed them seeing how I was a halfway intelligent guy and most public defender offices do not get the brightest law students. So I went into the interview without much self-imposed pressure."

Peter spent the first year at the D. C. Public Defender's office handling juvenile cases. After the first year he graduated to adult court where he handled misdemeanors for a year. His next move was to adult felonies cases.

"Sometimes, the new attorney is directed into the appellate division for a year writing appellate briefs," said Peter. He went on to say, "I somehow escaped going into appeals completely. When I say escaped, I mean the boring job of writing briefs. I wanted to be in the court trying cases. By my fourth year, I was handling murder, robbery and cases that carried a heavy penalty."

I inquired as to a typical caseload for him. He said that he carried anywhere between 30 and 40 cases. I thought 30 to 40 cases represented a lot of work, but Peter assured me that if one manages his/her calendar, the caseload was not that bad. Then he compared his caseload to some other public defenders' offices where caseloads reached

120 without help. He said in those offices where the caseloads reached the 120 mark a lot of plea bargaining had to take place.

What about memorable cases? “I tend not to remember my victories because all went well, but it is those defeats where you felt that you could have won; they are the ones I remember.” He went on to say, “There is this one case I would like to cite because it has relevance for instructional value. The case involved a client who dealt in drugs but not at the top level. He was accused of hitting a person in the head with a baseball bat. The person died and witnesses said that my client committed the act.”

According to Peter, his investigation revealed that his client, while involved in drug distribution, did not hit nor order the man be struck with the bat. Indeed, there was a second person involved. The second man in the case was the head drug dealer. The case boiled down to witnesses being intimidated as to what Peter’s client’s boss could do to them. Peter said he knew as much as anyone could having not been there when the crime occurred that the boss was the one who hit the man with the bat. Peter felt that the witnesses, defendants with cases pending, fingered his client as a means of gaining favor in their own cases. Peter said, “The case went to trial three times and was hung two times, but finally, a jury convicted my client because he was never able to prove or establish the facts to the satisfaction of a jury.”

In a somber mood, Peter spoke about the stress factor involved in the work and the naivete of his client. What caused Peter so much stress was the degree to which his client depended on him. According to Peter, the client felt that there was no way that he could be convicted for something he did not do. He trusted that a jury would be able to sort out the facts and know the difference between a lie and the truth. Peter said, “I kept trying to tell him and drive home the reality that what happened is different, and often times may not matter, as to what people come into the court and say happened. But again it was hard for him to believe he could be convicted when he knew that he had not done that thing. He felt that justice would be served.”

According to Peter, his client could not understand how people could come into court and lie about him and get away with it. Peter made it clear that from his innermost being, he thought his client was not guilty.

Having said as much, I asked him if getting emotionally involved in the case impacted the defense of his client. Peter said, “I think I get emotionally involved in all my cases. I approach all my cases the same way. I don’t let my beliefs, whether I personally believe the client did it or not—I don’t let personal beliefs affect how I handle the case.” Peter went on to say, “There is a price to pay when one approaches his work as I do because when you put your all into the work, at the end of the trial, you are physically, psychologically, and emotionally drained. Of course when you win all that dissipates, but, when you lose, it lingers for a while because you know the client will spend a long time in prison.”

I asked Peter whether he appealed the case. He said that he did not do the appeal, but another lawyer in his office did. In Peter’s own words,

I thought we had some good issues on appeal. The court found that there were trial errors by some of the rulings that the judge made, but found that the errors were harmless. This is frustrating because you sit there in court and see some of these errors being made, and the impact that they have on the jury right then and there is much different than when you read it in a transcript; and the court of

appeals looks in retrospect and says, 'Oh, harmless error'; but from my vantage point, it's not harmless because they effect the outcome of the case by influencing the jury.

I asked Peter for his assessment of the general picture of the public defender's office insofar as meting out justice is concerned. He said:

Certainly the image of public defenders, and often by our clients, is that we are second rate - we are second rate because a lot of this is due to how we are portrayed in the media. There are some bad public defenders also. The portrayal in the media is that public defenders are second-rate lawyers who could not get a job anywhere else—at the big law firms or as prosecutors. The general public perceives a prosecutor as being a step above a public defender. Some of that is created by the fact that most judges are former prosecutors. Prosecutors become judges but rarely do public defenders. Given the honor given unto judges, people reason that prosecutors must be good lawyers because they become judges, while public defenders must be poor lawyers because they do not become judges. The other thing is that we are court appointed. This works against the image of public defenders because many times clients feel we are in cahoots with judges. We hear things like, 'I know you get more money to plea us guilty than to go to trial,' which clearly is not true because we are salary employees. Or 'I know you and the judge get together on the golf course and hobnob and all that.' I don't know too many public defenders that socialize with judges or play golf with judges. Another perception is that if you were a really good defense lawyer, you wouldn't be a public defense lawyer; you would be a paid lawyer.

Jury nullification also came up during our interview. Peter outlined the history of jury nullification as being the "voice of the community." He said, "As the representative body of the community, if someone was charged with a crime, though the person committed the act, the jury felt it their duty to set the person free if the situation warranted." He went on to discuss how jury nullification became viewed as an act of revolution where the jury rejected the conventional wisdom, allowing the evidence to determine guilt. Nullification in this sense may be seen as a political statement. In just about every jurisdiction in the United States today, he indicated that attorneys couldn't argue jury nullification directly. He then spoke of a colleague's work on jury nullification, saying, "Professor Butler's article on black folks nullifying verdicts against other young blacks charged in non-violent drug crimes is currently being debated around the country."⁵³ As for me, a classic nullification case was the Rodney King verdict." In that case, Peter said, "White folks decided, despite what was on the videotape, 'We are going to do the right thing.' The right thing in their eyes was to acquit the police officers."

The final segment of the interview dealt with the blind symbol of justice. Peter was asked to react to the following statement: **Blind Justice must be given sight to see the injustices within the justice system.**

⁵³ Professor Paul D. Butler was Peter's colleague at Howard University and is nationally known for his theory on jury nullification.

Peter said, “That’s a good view. I think that’s a good proposition. In a perfect world justice should be blind, but we don’t live in a perfect world. We live in a world where there are many injustices and where people don’t start off on a level playing field.”

He went on to say, “If we close our eyes now in the dispensing of justice saying we are not looking at anyone’s particular situation, a lot of people will suffer, and there will be a lot of injustice. Therefore, the system has to be cognizant of relative positions of people. We cannot act as if everyone is equal in the justice system. If we act as if everyone is equal, there will be a lot of injustice.”

What about the statement that: **Justice must not be seen with the eyes, but rather, with the heart.** How do you respond to this declaration?

He simply said, “The argument of that declaration is a nullification statement.” Peter went on to say that “nullification is a two-way street in that the majority group can play the game as well as minority group members.” He went on to say, “The problem with this, however, is that if whites, as the majority group, begin to nullify cases where whites kill blacks, as was the case in the south not too many years ago, our goose would be cooked in this country.”

My final question to Peter dealt with a view of justice, which looks at justice as a religion. I explained to Peter that there are people who say that the justice system requires faith, as does religion. This view holds that the justice system has its goddess, as symbolized by the woman, Blind Justice, just as some religious groups have their gods and goddesses who may be symbolized, for example, in the pictures on their stain glass windows or tapestries. I took the comparison further to show that in both religion and the criminal justice system, there is the spirit of the law and the letter of the law. Finally, religious groups hold to an unshakable divine power sometimes call the Spirit while in justice, there is the *Spirit of Justice*.

Peter chose to respond to the letter of the law and the spirit of the law. He said, The problem with responding to the letter of the law has to do with the needs of society. When the law was written, presumably it met the societal needs at the time. In this time, is it still responding to the needs of society? Society hopefully progresses and changes and learns; therefore, to just say the letter of the law then carries today is in many ways counter-productive. It is not saying that the law is a living law—fluid and productive. The same thing applies with the intent (spirit). People wrote down what they intended but to say what is the intent, do we look to the legislature at what they wrote down? Many times law is an act of compromise. There are times when you should look to the intent (spirit) of the law because men lack the ability to write perfect laws. The problem is whether individuals distort the letter of the law who give interpretations based on what they say was the intent (spirit).

The Role of law in Building the Inclusive Community

The theme of this work is from diversity, to unity, to community. In line with that theme, it is fitting that we explore the role of law in forming such a community. From our perspective, an ethical legal system is a major building block in building community. Clearly, law provides the “rules of the game” by which we all must play. It is impossible to build an inclusive community if those laws foster disparate treatment.

The training session is designed to invoke audience interaction and participation. The session involves a discussion of three major topics. The first of these discussion topics entails an exploration of the role of diversity in rectifying problems that plague our legal system. The second discussion topic can best be termed as a call to unity—a discussion as to how we might set aside race, sex, and economic status considerations in seeking true justice. The final discussion topic is the effect that a truly just legal system would have in building community. The method used is a series of exercises, word puzzles, which were designed to facilitate frank discussion of the strengths and problems of legal systems and possible solutions.⁵⁴

The intent of the word puzzle exercise is to cause the participants to consider the gap between the theory of equal justice as taught in law school, and the practice of justice in the United States. The exercise highlights the fact that the theory of equal justice bears little resemblance to the practice where one’s race, sex, or economic status is often determinative of the “justice” that one receives.

You are called on to unscramble four word puzzles. The first of these is as follows.

1	2	3	4	5	6	7
Jingle	Usurper	Sam	Take	Injustly	Choice	Envoy
Jump	Ultra	Sever	Tempest	Injure	Concerning	Eye
Judge	Umbra	Solicitor	Terror	Infirm	Case	Equity
Jack	Uncle	Sytem	Talking	Informative	Covet	Earth

The exercise calls for you to choose a single word from each column, starting with column one. In the first column, for instance, one might choose the word “Jump.” From the second column one might choose the word “Usurper,” From the third column “System” might be chosen and likewise with the rest of the columns. The catch is that the words chosen, when lined-up together, must constitute a complete phrase. There is but one intelligible phrase that can be gleaned from each of the word puzzles and you are challenged to take a few minutes to find that complete phrase.

The single complete phrase in exercise one is:

Judge	Uncle	Sam	Talking	Unjustly	Concerning	Equity
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When you call out the first letter of each word, you have

<u>J</u>	<u>U</u>	<u>S</u>	<u>T</u>	<u>I</u>	<u>C</u>	<u>E</u>
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⁵⁴ Developed by Deryl G. Hunt, Sr. with modifications by Deryl G. Hunt Jr.

Justice is the hidden word.

Who is Uncle Sam and why does he speak unjustly concerning equity? The answer lies in our government's double-talk. In theory, justice is blind and irrespective of a person's race, sex, or economic status, blind justice will lead to the right result. Blind justice, it seems, can mean two things. It could mean that justice is not partial to any one group of persons. However, it could also mean that justice (the justice system) is rendered blind and as such, ignores the inequities that plague our system.

The second word puzzle:

Legally	Asks	Denies	Yearning
Lip	Answers	Delve	Yoke
Law	Ascertains	Dominate	Years
Last	Always	Dollars'	Yours
Letter	Apple	Develop	Yesterday

The solution is as follows.

Law	Answers	Dollars'	Yearning
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Indeed law does answer dollars' yearning. Wealth affects our justice system in at least two ways. First, at its core, our justice system is inextricably linked to our political system. In most cases judges are elected instead of appointed which makes them vulnerable to political graft. Judges, like any other political figures, recognize that befriending the right people and establishing the right political ties tends to increase their longevity on the bench. The effects of this union may go largely unnoticed, but in its own small way, it further undermines the character of the justice system and all who participate.

The second way that wealth affects our justice system is that the very nature of our adversarial system rewards those with money. How? Money allows the participant to buy better lawyers and better experts, all of whom, if they do their jobs well, have the ability to muddle the truth. Unfortunately, the better these experts do their jobs (manipulate the legal system), the less faith people have in our system's ability to fairly administer justice. In light of the foregoing, the question posed to you is whether true justice can be bought and sold. The answer is a resounding "no." Although one may be able to buy a result, true justice can never be bought or sold.

Again you are asked to call out the first letter from each column.

L	A	D	Y
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"Lady" is the hidden word. If we put "lady" with the first hidden word "justice" we get "LADY JUSTICE." The familiar statue of Lady Justice, or Themis as she is known in the Greek, adorns the halls of many legal institutions. Themis, the daughter of the Greek god Uranus, was considered the goddess of justice. She is frequently depicted holding a

scale in one hand and blindfolded. The question posed to you is whether Lady Justice should remain blindfolded in meting out justice or should she, rather, remove the blindfold in a conscious effort to consider the individual.

A true understanding of the meaning of justice would reveal that the application of the word “justice” to the word “blind” creates a true oxymoron. In truth, true justice cannot be blind. Justice must consider each participant individually and each situation separately to reach a right result. Many Americans, like sheep to the slaughter, blindly believe that “blind” justice equals “fairness.” The phrase “blind justice” has been repeated so often that although the words “blind” and “justice” are illogical and diametrically opposed to one another, the two words appear to fit comfortably together in modern thought.

The third word puzzle follows.

Speak	Come	Hair	Off	Often	Light
Saint	Cow	Here	Out	Organ	Lip
Sensible	Clef	Hurt	Opera	Offer	Love
Students	Cheap	Heat	Our	Of	Life

The solution.

Students	Come	Here	Out	Of	Love
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Question: Students go where out of love? The answer follows.

<u>S</u>	<u>C</u>	<u>H</u>	<u>O</u>	<u>O</u>	<u>L</u>
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School, or law school, to be more precise, provides the means for aspiring students with a genuine love of the law to learn to think like “lawyers.” One of the writers recalls his first day in law school when the professor asked “why are you here in law school?” The most common response was something to the effect of “I couldn’t imagine doing anything else.” He got the impression that it was neither the money nor the power of practicing law that enticed the students to study law. Rather, their impetus was the desire of working within a legal framework to solve problems. However, after a three-year stint, a dramatic change in student attitudes became apparent. Whereas many students initially came to law school out of love of the law, their enthusiasm for their studies waned as the semesters passed. The combination of fierce competition and intimidating professors caused many to become downright skeptical and disenchanted with the adversarial nature of the practice of law. In the end, he and his classmates slowly realized that the focus was not on justice, but rather was on maintaining the status quo via concepts such as *stare decisis* which values precedent over justice.

Now consider the final word puzzle.

Lawless	Aptitude	Worst
Learning	Advantage	Walk
Leading	Adversarial	Wok
Lusting	Argument	Ways
Lawyer	Apples	Wired

The solution is as follows.

Learning	Adversarial	Ways
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<u>L</u>	<u>A</u>	<u>W</u>
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At the heart of our legal system is the adversarial process. In the practice of criminal law, this adversarial posture is especially acute. A defendant is found either guilty or not. This leaves little or no room for compromise. In short, criminal defendants are faced with a win -lose situation, which sometimes leads to an unjust result. You are called upon to explore alternatives to the adversarial process such as mediation and counseling.

The four word puzzles, taken together, tell a story. Many students come to law school with generally good intentions. They find, however, that the study of law is not about justice. Rather, the focus is on maintaining the status quo. The students quickly learn to adapt their thinking to conform to established legal norms and concepts such as blind justice. These teachings wink at blatant inequities that plague our justice system and help to further oppress those without financial means-especially racial minorities. The result is a class of polarized students - most buying into the notion that blind justice will necessarily result in equality. A minority, however, will see that racial, ethnic, gender, and economic issues have disadvantaged a significant portion of the population and for true justice to be attained, one must make a conscious effort to address these areas. This minority view is necessary in moving our society from diversity, to unity, to community.
