

JUSTICE FOR ALL: THE CONSTRUCTION OF WHITE
IDENTITY IN OREGON CIRCUIT COURTS

by

SONYA SWANSON

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JUSTICE FOR ALL: THE CONSTRUCTION OF WHITE IDENTITY IN OREGON CIRCUIT COURTS

Approved: *Dr. Debra Thompson*
Primary Thesis Advisor

American society is constructed atop an inveterately racist foundation. Oppressive institutions - including slavery, Jim Crow laws, and mass incarceration - have instituted the legal subjugation of People of Color, thus programming racial oppression into the social order. The criminal justice system is meant to be a great equalizer; Lady Justice holds her scales with a blindfold, signifying the supposed impartiality of legal institutions. Yet, in actuality, the criminal justice system reflects the same racial inequalities that exist throughout society, in that whiteness is hegemonic in this system. In order to form conclusions about the construction and interpretation of white identity within the criminal justice system, my research uses ethnographic methods to analyze the processes and exchanges that occur within two Oregon circuit courts. This study ultimately finds that the criminal justice system somewhat expels lawbreakers from whiteness. Whites who plead guilty to crime are essentially admitting to a betrayal of white performance, and thus relinquish certain social protections of white identity. White offenders outcasted within their racial group, and thus swallowed up by the criminal justice system.

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Introduction

In many ways, criminal procedure is impersonal and indiscriminate. Irrespective of the circumstance, accused parties must navigate the bureaucratic tedium of the legal process: the initial arrest, indictment, and arraignment precede plea deal negotiations, and should the defense and state reach a plea deal, the trial and sentencing may be as brief and mechanical as animal slaughter. However, despite the seemingly neutral role of law, institutions within the criminal justice system end up with staggering racial disparities by nearly every measure.

The criminal justice system is rarely unbiased and frequently antagonistic. In 2014, the U.S. Department of Justice reported that Blacks were incarcerated in state prisons at five times the rate of whites.¹ Statistically speaking, it is evident that race matters in the criminal justice system. The white hegemony on which America was founded persists today, maintained and validated through the outright denial of systemic racism. The courthouse is supposed to be an equalizer - a place where innocence is presumed, and guilt must be proven beyond a reasonable doubt - yet racial bias exists at every level of the criminal justice system.

Race is a socially constructed identity that defines systems of power and oppression. Institutions, which mirror the values and beliefs of a society, establish and police the parameters of race. As these identities are redefined, conceptions of race become more deeply ingrained in the collective consciousness. As extensions of the judiciary, Oregon circuit courts are a political institution that invariably influences conceptions of whiteness. The following research seeks to identify how the Lane and

¹ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington D.C.: The Sentencing Project, 2016), 3.

Clackamas Circuit Courts might define, recognize, and/or reinforce tropes of white identity.

Background

Institutional Bias

To begin to examine institutional racism, it is first necessary to define the concepts and systems that this research will explore. Institutions are “systems of organization” grounded in certain realms of society that reflect the behavior and values of a civilization.² Political institutions in democratic regimes serve to uphold popular sovereignty and civil liberty. In this context, the government is a larger institution - a “meta-institution” - that organizes a variety of other groups.³ The criminal justice system, which is comprised of a network of institutions, falls into this bureaucratic apparatus; law enforcement, adjudication, and corrections work together in order to apprehend potential offenders, punish criminals, and interpret the law.

American criminal proceedings operate under an adversarial system of justice. An adversarial system encompasses three primary components: two litigants and one unbiased arbitrator. In criminal trials the prosecution represents the state, while the judge and jury act as neutral third parties. Just as an umpire determines whether a pitch falls within the strike zone, a judge must ascertain the truth from opposing arguments. Impartiality is the fulcrum around which the integrity of the adversarial system revolves. Yet, complete neutrality is an inherently unattainable objective. Law professor Ellen Sward reasons that “it is probably impossible to eliminate bias entirely, simply because judges are human and therefore have certain conscious and unconscious

² Seumas Miller, "Social Institutions", *The Stanford Encyclopedia of Philosophy*. Metaphysics Research Laboratory, Jan. 4, 2007, <https://plato.stanford.edu>. Accessed July 15, 2019.

³ *Ibid.*

predilections”.⁴ Prejudice and justice are seemingly inextricable, though this entanglement is obviously contradictory.

The Injustice of Inaccessibility

In theory, law is neutral; the Fourteenth Amendment realizes egalitarian constitutional concepts, guaranteeing citizens the right to due process and equal protection under the law.⁵ These aims are not met in practice because the law is so vastly inaccessible. The justice system is a labyrinth of convoluted and abstruse processes - without professional expertise, laymen cannot accurately navigate legal procedure.

In an effort to provide representation to indigent criminal defendants, state appointed attorneys must balance burdensome caseloads against hectic schedules. Alternatively, private attorneys are able to work intimately with their clients, dedicating time and resources that public defenders cannot afford. The scarcity of criminal legal resources available to lower-income Americans engenders widespread inequality in sentencing. Those who retain private counsel have a considerable advantage in the courtroom; one study from the Bureau of Justice Statistics reported that “in large State courts 71% with public counsel and 54% with private attorneys were sentenced to incarceration.”⁶

⁴ Ellen Sward, “Values, Ideology, and the Evolution of the Adversary System,” *Indiana Law Journal*, Vol. 64, Iss. 2 (1989), 308.

⁵ United States Constitution, art. 14, sec. 1.

⁶ Caroline Wolf Harlow, “Defense Counsel in Criminal Cases,” *Bureau of Justice Statistics* (2000): 1.

Pronounced disparities in wealth holdings across racial groups exacerbates racial inequality in the criminal justice system. Given that “Black households hold only 6 percent of the wealth owned by white households,”⁷ it is unsurprising that Black people are statistically more likely to retain public defenders than whites.⁸ In turn, African Americans represent a disproportionately high portion of the incarcerated community - 38 percent of inmates, but only 13 percent of the national adult population.⁹ Wealth equates to resources, and resources equate to access; without access, indigent Black defendants cannot take complete advantage of their legal rights.

Racial disparities in the economy and criminal justice system interface in a self-perpetuating sequence wherein the existence of inequality in one domain begets various other forms of equality. This cycle is manifested in American institutions, consequently impeding the upward mobility of Blacks.

Oregon Criminal Justice System

African Americans represent 10% of incarcerated adults despite comprising only 1% of the entire state population (Oregon Department of Corrections). The mass incarceration of Black people has contributed to the perpetuation of more subversive forms of inequality across the state. For example, a 2011 Portland housing audit discovered that “landlords and leasing agents discriminated in 64 percent of 50 tests across the city” (Bates and Curry-Stevens, 43). Portland has been aptly nicknamed ‘the

⁷ Laura Sullivan, Tatjana Meschede, Lars Dietrich, & Thomas Shapiro, “The Racial Wealth Gap: Why Policy Matters,” *Demos* and *The Institute on Assets and Social Policy* (2015): 7.

⁸ Deborah Povich, Brandon Roberts, and Mark Mather, “Low-Income Working Families: The Racial/Ethnic Divide” *The Working Poor Families Project* (2015): 4.

⁹ U.S. Census Bureau, “Quick Facts,” United States, <https://www.census.gov/quickfacts/table/PST045215/00>; Ann Carson, Bureau of Justice Statistics, “Prisoners in 2014” (2015), 15. <http://www.bjs.gov/content/pub/pdf/p14.pdf>.

whitest city in America'. Accordingly, Black people are frequently seen as outsiders, and struggle to establish communities in Oregon. A 2014 report from Portland State University and the Coalition of Communities of Color reported that, "Black families lag far behind whites in the Portland region in employment, health outcomes, (...) high-school graduation rates," and annual income (Semuels, 2016). Mass incarceration produces intergenerational inequality, for it ensnares Portland's underprivileged minority communities in ceaseless cycles of poverty.

Methods

Methodology

This thesis aims to uncover how the Lane and Clackamas County Circuit Courts make sense of whiteness. Guided by this research problem, my investigation explores consequential subject matter, including racial performativity, the structural barriers and privileges associated with identity, and bureaucratic entrenchment in systems of oppression and power.

The following research employs an ethnographic methodology to analyze the behavior and language of judges and other courthouse personnel. Given the empirical nature of this inquiry, a strictly quantitative research model would be incapable of addressing and interrogating the underlying social themes of this study. Ethnography, however, assumes a more subjective approach to research.

Ethnographic writing research seeks “to document the cosmology, that is, the knowledge and belief systems that contribute to the coherence of the group”.¹⁰ Culture is both intricate and unquantifiable. Although culture can be neither precisely reproduced nor tested, it can be periodically entered; it is from those moments of lived experience that ethnographers develop a written narrative.¹¹ Ethnographic study is particularly valuable within the discipline of political science. Analyses of policies, governments, and other political institutions are enriched by insider perspectives;

¹⁰ W. J. Potter, *An Analysis of Thinking and Research About Qualitative Methods* (Hillsdale, NJ: Lawrence Erlbaum, 1996), 51.

¹¹ Wendy Bishop, *Ethnographic Writing Research: Writing It down, Writing It up, and Reading It* (Portsmouth, NH: Boynton/Cook, 1999), 4.

information gained through lived experience advances more holistic interpretations of the processes, interactions, and phenomena of political life. Ethnographers are poised to form revelations about larger social truths, for their research enables a more critical examination of group behavior. By exploring social patterns and relationships within a given community, ethnography “[unmasks] hegemony and address oppressive forces” of society”.¹²

Some social researchers narrowly define ethnography as an act of *participant* observation. This is to say that, in order for a project to be considered ethnographic, some believe that a researcher must be fully immersed in the environment and actively take part in the observed culture. Anthropologist James Spradley characterizes ethnographic study as a deeply personal and participatory experience, writing that fieldwork involves “participating in activities, asking questions, eating strange foods, learning a new language, observing play, interviewing informants and hundreds of other things”.¹³ Through this interpretation of ethnography, my research would be not be considered primarily ethnographic. Although I aim to integrate myself with the environment, I do not engage with my surroundings in a radically immersive way - that is, at least, not in the manner Spradley describes. Yet, although my fieldwork does not involve complete cultural participation, I contend that this project qualifies as ethnographic research. Anthropologist Martin Forsey argues that participant observation is not an essential aspect of ethnographic research, but rather a “mythic ideal” imposed

¹² Michael Crotty, *The Foundations of Social Research* (London: Sage, 1989), 12.

¹³ James Spradley, *Participant Observation*, (New York: Holt, Rinehart and Winston, 1980), 3.

by Western scientific culture.¹⁴ Forsey adopts a more liberal view of ethnography, deeming it “an act of engaged listening rather than participant observation.”¹⁵ Ethnography encompasses a variety of methods and practices, all of which are uniquely valuable to the research they serve. In the book *Ethnographic Writing Research*, Professor Windy Bishop concedes that ethnographers “rarely agree on the quantities and ordering of techniques or the degree to which quantitative data are ‘allowable’ and desirable”.¹⁶ Ethnography is a research tactic rooted in individual experience; as such, interpretive research processes have the flexibility to be tailored to meet the particular needs of a study.

Research Design

This research focuses on the construction of race in the criminal justice system, specifically within the Lane and Clackamas County circuit courts. Oregon circuit courts have both original and general jurisdiction, meaning the initial trial for any case type is held in circuit courts. After surveying the federal, municipal, and county courthouses in Lane and Clackamas County, I selected county courts as the site for my research. This choice was primarily practical, for these courts are relatively accessible to the public, process a high volume of cases, and are located within close proximity to me. In terms of theoretical advantages, the racial demographic of Clackamas and Lane county are extremely similar; both localities are 89% white, 1.2% Black, and roughly 9% Hispanic

¹⁴ Martin Forsey, “Ethnography and the myth of participant observation,” *Studies in Qualitative Methodology*, 11 (2010): 69.

¹⁵ *Ibid.*, 66.

¹⁶ Bishop, 17.

- these figures closely resemble the racial composition of Oregon as a whole.¹⁷

Moreover, since county courts have general jurisdiction, it was likely that I would observe a greater variety of case types.

I spent roughly twenty-two hours in the Lane County Circuit Court over a period of two months and eight hours in the Clackamas County Circuit Court over the span of two weeks. By positioning myself in this setting, I sought to experience the adjudication process from a first-hand perspective. This position gave me access to the customs and processes of the courthouse, as well as the familiar exchanges between judges, attorneys, and defendants. I posited that these observations could yield greater insights into the relationship between the criminal justice system and the construction of white identity.

Data Analysis

The process of data analysis unfolded in stages throughout this research, beginning early on in the process of data collection; these research phases “are not entirely separable stages but are intertwined, researcher sense-making begins the moment the researcher enters the field.”¹⁸ I continually returned to my fieldnotes throughout the course of my research, evaluating the data for recurring concepts or patterns that might illuminate my larger research question.

¹⁷ “Oregon Population,” *World Population Review* (2019), retrieved from <http://worldpopulationreview.com/states/oregon/>.

¹⁸ Peregrine Schwartz-Shea and Dvora Yanow, *Interpretive Research Design: Concepts and Processes* (London: Routledge, 2011), 104.

I exercised methodical documentation techniques that organized my notetaking process into two categories: observation and evaluation. Each fieldnote entry begins with an overview of the research site, including detailed descriptions of the physical environment and broad demographic profiles of the people in that space. The subsequent notes chronicle details (quotes, expressions, gestures, etc.) of the conversations and interactions I witnessed firsthand. I reviewed these observations regularly to annotate salient moments and identify larger themes in the research.

The facets of individual identity are inextricable from the research process; by nature, ethnographic study positions the researcher as the data-collection instrument.¹⁹ Positionality examines the ways in which factors like socioeconomic status, gender, race, or educational background might influence an ethnographer's experiences collecting and synthesizing data. My positionality is defined by my identity as a white, heterosexual, cisgender woman. As a socially aware and politically informed undergraduate student, I am cognizant of the societal advantages my white identity affords me. However, because the United States is entrenched in a dominant white culture, I am not forced to actively confront the implications of my race. This research compels me to reflect on the ways in which my conceptions of race have manifested in my own performances of whiteness and examine how these performances allow me to access power and privilege.

¹⁹ Erin Beck, *How Development Projects Persist: Everyday Negotiations with Guatemalan NGOs* (Durham: Duke University Press, 2017), 228.

Research Constraints

Throughout this investigation I encountered various practical obstacles that impeded the progress of this research. Time restraints were a persistent issue, for it was difficult to balance outside commitments (e.g. school, work) with the court schedule. Circuit courts are open during regular business hours, though hearings only begin at designated times throughout the morning (8:30am, 9:00am, 9:30am) and afternoon (1:30pm, 2:00pm, 3:00pm). Planning around these time frames was futile, for it was not uncommon for hearings to be delayed or postponed.

Furthermore, the scope and depth of data in this research were limited by the scarce availability of case information. I originally sought to supplement my fieldnotes with the contextual details of each case, but soon discovered that Oregon judicial records are not wholly available to the public. The Oregon Judicial Department provides a free online records search tool, though this database only relays the basic facts of a case. Moreover, access to the Oregon Judicial Case Information Network (OJCIN) - a digital subscription service that provides documents and information from cases tried across all Oregon circuit courts - is limited to “Designated Government Users, Oregon State Bar members, and business subscribers with a specific need for court documents.”²⁰

²⁰ “Online Services,” Oregon Judicial Branch, Accessed November 10, 2019. <https://www.courts.oregon.gov/services/online/Pages/ojcin-signup.aspx>.

Literature Review

Race bears an indisputable influence upon the United States criminal justice process; in turn, the legal system has played a crucial role in shaping evolving conceptions of racial identity. There is an extensive body of literature documenting the history of race-making in America, and many of these works specifically explore the development of white identity. The following literature review aims to provide a broad overview of this complex subject matter.

The Origins of Race

By the time Spanish ships arrived at the shores of North America in 1492, the transatlantic slave trade had already begun off the west coast of Africa. The Spanish conquered indigenous people like territory; colonists referred to Native Americans as “negros de terra,” or Blacks of the land.²¹ The Europeans racialized indigenous bodies to assert dominance and control over the native population. This practice engendered an ascriptive social hierarchy wherein the white elite consolidated power over enslaved people.

To comprehend the ways in which understandings of race evolve over time, it is important to understand race as a socially constructed classification, not a biological reality. Race derives authority and legitimacy from society. In essence, race matters because humans collectively acknowledge and attribute value to race. Biological anthropologist Jonathan Marks contends “race is better understood as a product of

²¹ Ibram Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America* (New York: Nation Books, 2016), 25.

‘nature/culture,’ the ascription of arbitrary cultural meaning to patterns of human diversity”.²²

Juridical Race-Making

Although race is typically signified through physical appearance, straightforward phenotypic distinctions between races became more difficult to discern as racial identities grew increasingly diverse. Multiracial people straddle the borderlands of identity, representing heritage that refuses to conform to one racial group. Ariela Gross describes how racial ambiguity posed a grave legal dilemma for whites in the Antebellum South. Southern white culture attributed privileges of citizenship, such as “sitting on a jury, voting, and mustering in the militia,” to white men.²³ The conceptual entanglement of race and citizenship had appreciable consequences on legal definitions of race; race was no longer a mere biological categorization, but a detectable behavior. Whiteness could supposedly be broken down into specific identifiable attributes and performances. Racial identity trials, which were initially conducted in the South during the mid 1800s, tasked courts with the responsibility of establishing a general criterion for what constituted whiteness. For the first time, the law “was involved not merely in recognizing race but in creating it”.²⁴

Racialized Citizenship

²² Jonathan Marks, *Is Science Racist?* (Cambridge: Polity Press, 2017), 28.

²³ Ariela Gross, *What Blood Won't Tell* (Cambridge: Harvard University Press, 2008), 49.

²⁴ *Ibid.*, 54.

Gross contends that there are no clear standards for what constitutes Black or white performances. Rather, performances are shaped by the ideas and values a society wants to communicate about race. For example, white womanhood was exhibited in “purity and moral goodness to their neighbors,” while white manhood was defined by “the exercise of legal and political rights”.²⁵ Black and white identity developed in contradiction to one another, the former being associated with negligence, criminality, and impure behavior.²⁶ The courts intertwined portrayals of racial identity with notions of citizenship, tying conceptions of whiteness and Blackness to ideas of freedom and subjugation. These characterizations helped to crystallize racial boundaries.

In the context of American democracy, citizenship is understood as “equality in the political sphere, equal opportunity in the economic realm, and the right to participate in public affairs.”²⁷ There is an implicit agreement among members of a democratic society to prioritize the equality of all citizens over the interests of the power elite; by affording all citizens equal protection under the law, democratic societies strive to establish a more inclusive polity. Joel Olson scrutinizes the role and impact of democratic citizenship in the United States, writing, "American democracy is a white democracy, a polity ruled in the interests of a white citizenry and characterized by simultaneous relations of equality and privilege: equality among whites, who are privileged in relation to those who are not white."²⁸ Olson echoes Gross, contending

²⁵ *Ibid.*, 71.

²⁶ *Ibid.*

²⁷ Joel Olson, *The Abolition of White Democracy* (Minneapolis: University of Minnesota Press, 2004), 40.

²⁸ *Ibid.*, x.

citizenship is a social status attributed to whiteness. Citizenship is an intrinsically exclusionary standing, for it implies the existence of an antithetical outsider; this distinction “provides citizens with a glass floor below which they can see but they cannot fall.”²⁹ Racialized conceptions of citizenship reinforce white hegemony through the alienation of non-white identities.

Although the United States population grows increasingly diverse, the nation is commonly distinguished as a predominantly white country. As a result, any non-white person is immediately regarded as an outsider. Rinku Sen states, “U.S. history is full of attempts to exclude people who did not seem at the time to conform to the image of a ‘real American.’”³⁰ Although definitions of whiteness have evolved over time, People of Color are unfailingly cast as outsiders. Sen notes that this habit is detrimental to the health of democracy, writing, “to define the American as a white person can only lead us to institutionalizing racism, a system in which only whites are considered entitled to the privileges and rights conferred by citizenship.”³¹

The “New Race Problem”

The years following the Reconstruction Era were unstable and trying. As the southern states fell into disarray, the poor white population became increasingly visible. Nancy Isenberg claims that indigent southerners were perceived as disgraced deviants; despite descending from Anglo-Saxon stock, this lot degenerated “into an idle, ignorant,

²⁹ *Ibid.*, 43.

³⁰ Rinku Sen and Fekkak Mamdouh, *The Accidental American: Immigration and Citizenship in the Age of Globalization* (San Francisco: Berrett-Koehler Publishers, 2008), 56.

³¹ *Ibid.*, 8.

and physically and mentally degraded people.”³² In the eyes of the power elite, this inferior lineage posed a threat to the sustained dominance of the white race

At the turn of the century, eugenicists began advocating for policies that would preserve the purity of the white race. Many states legalized the segregation and sterilization of “unfit” populations, including “criminals and the (...) diseased and degenerate [poor] classes.”³³ However, the primary target of these policies was poor white woman. Eugenicists were concerned that “feble-minded” women would seduce the honorable men of upper-class households and breed genetically inferior children; this narrative parallels southern fears of “passing mulattos” marrying into a white lineage.³⁴ whiteness was emerging as an identity distinguished by social status. Performing whiteness meant performing class. Attributes like morality and intelligence were attributed to the middle and upper class; these qualities demonstrated racial purity. “For many in the early twentieth century, then, the ‘new race problem’ was not the ‘negro problem.’ It was instead a different crisis, one caused by the ‘worthless class of anti-social whites.’”³⁵ Once a mechanism of class solidarity, whiteness was eventually defined in two segregated identities: the whites, and the white trash.

³² Nancy Isenberg, *White Trash: The 400 Year Untold History of Class in America* (New York: Penguin Random House, 2016), 181.

³³ *Ibid.*, 195.

³⁴ *Ibid.*, 197.

³⁵ *Ibid.*, 200.

Contributions to the Field

Previous research has examined the history of racial determination on a cultural level, tracing historical understandings of white identity in relation to political and economic institutions. These interpretations are valuable to structural readings of race and power, though they fail to illuminate the ways in which imposed racial identities are projected and performed in everyday exchanges. This research departs from the existing literature in that it understands the practices and interactions within circuit courts as a reflection of the local society. Although these findings are particularly valuable in evaluating Lane and Clackamas county, this research may offer insights into conceptions of whiteness on a statewide or regional scale.

Results

Lane County Circuit Court (January-March 2019)

The Lane County Public Service Building is a cramped collection of government offices situated in the center of downtown Eugene. This structure houses a variety of county departments, including the County Sheriff, Human Resources, County Commissioners, and the Lane County Circuit Court. The Courthouse itself is humble; aesthetically speaking, it has remained relatively unchanged since the 1960s. Although the court now processes 33,000 cases each year and roughly 650 visitors each day, the space is rather small, tucked into the western corner of the property.

The first time I visit the courthouse it strikes me that this faction of the building is somewhat forgotten amidst the activity of the surrounding offices. I enter on the side opposite the courthouse, and consequently find myself wandering around the vicinity for fifteen minutes. The red brick floors and concrete walls echo each hurried step as I search for my destination. Despite being lost, I refuse to ask for directions. I have a paranoid, albeit unfounded, notion that I already stick out as an outsider, and therefore refuse to make a nuisance of myself.

When I finally find the courthouse entrance, security guards greet me amicably and direct me to the information desk on the first floor. I ramble to the secretary that I am a University of Oregon student doing research for my thesis and am not sure what the etiquette is for notetaking in courtrooms. She smiles warmly, directs me to the court calendar, and tells me I am welcome to go to any of the hearings posted for that day. The calendar for January 31st, 2019 is five pages long and lists 93 hearings;

overwhelmed by the vastness of this schedule, I photograph each page. Since it is 2:00pm I have already missed the 60 hearings that took place that morning, though still have 33 other opportunities this afternoon. I experience momentary choice paralysis and the feeling that perhaps I made a mistake - I tell myself that I should do more research on these trials and come back another day when I am more prepared. After debating with myself for several minutes, however, I decide to stay put and sit in on a pretrial conference for an offense felony case that is set to take place in 30 minutes in room 302.

Observations: Inside the Courtroom

Courtroom 302 is running behind schedule, though no one appears to be in a hurry to begin the proceedings. The presiding judge is Lauren S. Holland; Holland is a white woman and has worked as an Oregon Circuit Court judge for 26 years. In front of Judge Holland, a young man and woman sit at the prosecution's table, both of whom are also white. I watch as an officer escorts two men and a woman to seats on the right side of the room, opposite the prosecution. Each of these defendants is uniformed in orange shoes and dark green scrubs that read "Lane Co, Jail" on the back. Aside from a small woman sitting near the front of the room, I am the only person seated in the public gallery. For several minutes, little happens; the court clerk and court reporter work silently in front of the judge's bench, the prosecutors speak among themselves, and the defendants sit despondently in their seats. At last, Judge Holland begins the pretrial conference for *State of Oregon vs Jeremy Allen Black*³⁶ by hearing statements from the defense. Jeremy Black, a 27-year-old white man, was charged with Theft in the First Degree after allegedly attempting to steal a bike in December of 2018. The public

³⁶ *State of Oregon vs Jeremy Allen Black*, No. 18CR85735, (L.C.).

defender representing Black states that his client is scheduled to receive a mental evaluation later this afternoon, and thus makes a motion to postpone the trial 60 days until the results of that evaluation are known. Judge Holland agrees to postpone the trial but is not comfortable with a 60-day assessment period, saying “I will not be using the court’s discretion” in this decision. The trial is moved to February 12th, and Black is dismissed.

I note that Judge Holland has a commanding presence and wastes little time in the courtroom. Holland immediately calls the next case forward, *State vs John Michael Gibson*.³⁷ Gibson is a 43-year-old white man facing felony charges for Strangulation and Assault IV. Gibson’s attorney explains that his client is a high school dropout, suffers from a traumatic brain injury, and has worked in agriculture his entire life. Prior to this hearing, the prosecution offered Gibson a plea deal for a reduced prison sentence in exchange for his guilty plea. Judge Holland hears the plea, looks directly at Gibson, and asks him if he understands that he will forfeit certain rights if he pleads guilty to the charges. Gibson says yes and begins to elaborate further but is quickly silenced by his attorney. The judge, still making eye contact with Gibson, asks if he has any more questions, reminding him that this will be the last opportunity to inquire about the implications of his plea. Gibson replies, “It’s pretty cut and dry and this point,” and looks at the ground.

The female prosecutor, Lisa Donnell, rises and begins to describe the circumstances under which the offenses took place. She describes how in the late evening of December 26, 2018, Gibson drunkenly entered the hotel room where his

³⁷ *State vs John Michael Gibson*, No. 18CR85967 (L.C. Jan. 31, 2019).

partner and children were sleeping and began violently punching and strangling his partner. Although Gibson has never served prison time, he has a history of drinking and violence, and this incident was a violation of his probation. Following the prosecution's account, Judge Holland invites the victim, Ms. Lewis, to give an impact statement. As Ms. Lewis comes forward, I study Judge Holland's face - she is focused, her eyes narrowed. Ms. Lewis is sympathetic towards her abuser, saying that these events are not representative of his character. "He is a loving and caring father and partner (...) The children miss him, and we will continue to support him." Gibson makes a point to not look at Ms. Lewis, and instead commits his gaze to the front of the courtroom. After Ms. Lewis returns to her seat, Gibson makes a statement as well. He apologizes for his actions and takes responsibility for his alcohol addiction, admitting that substance use has had serious adverse impacts on his epilepsy. He solemnly states, "My pigheadedness is what put me in this situation," but says he still hopes to leave prison in time to see his fifteen-year-old daughter graduate high school. At this point, Judge Holland cuts him off abruptly. The room is quiet - Holland pauses for a moment before saying, "The court is here to protect people from you." She continues, "If you want to be a father to these children, you will fix yourself (...) You have an incredible influence on them." Judge Holland sentences Gibson to two years in prison with 24 months post-prison supervision. Gibson accepts this judgement with a look of stoic resignation before returning to the pews behind him.

The final hearing of the day is a pretrial conference for *State of Oregon vs Brittney Ann Matzen*.³⁸ Matzen, 32, is a thin and pale - I notice that her hair's red ends

³⁸ *State of Oregon vs Brittney Ann Matzen*, No. 16CR53207, (L.C. Jan. 31, 2019).

contrast intensely with the faint blue undertones in her skin. Matzen and her attorney communicate in hushed voices as the male prosecutor stands to recount the accusations brought against Matzen: Possession of Methamphetamine and Heroin, and Failure to Appear I. The defense attempts to shed light on the life circumstances that preceded these crimes, revealing that Matzen has received very little formal education beyond elementary school. Matzen's attorney requests a lenient jail sentence of ten days, a six-month license suspension, 24 months of post-prison supervision, and regular drug testing in exchange for a guilty plea. Judge Holland considers both parties before eventually shifting her attention to Matzen. Holland repeats the charges, this time listing the maximum penalty each offense carries: "Possession of Heroin: ten years in prison and a \$250,000 fine; Possession of Methamphetamine: five years in prison and a \$100,000 fine; Failure to Appear I: one year in prison." Holland takes a breath before remarking, "The court does not have to follow these guidelines." Matzen stares back at Judge Holland motionlessly. Holland asks Matzen why she missed her original court date, to which Matzen replies, "I have no excuse. I was still using and was on the streets." The judge nods sympathetically and moves forward with the hearing.

The prosecution details the events of the crime, claiming that officers found Matzen on private property with heroin on a soda can and in a small baggy, along with methamphetamine on her person. When Matzen is invited to speak on her own behalf she acknowledges the severity of her substance abuse, saying, "My life is on the line." She apologizes for allowing her addiction to go this far - she began using 12 years ago, only staying clean during her pregnancy with her son. Although her son has been adopted into another family, she expresses her desire to develop a relationship with him

when he gets older. Once Matzen is seated, Judge Holland turns her focus to creating a post-release plan. Given that Matzen's mother is also an addict, Holland believes it is not safe for the two to live together. Judge Holland reiterates the importance of securing suitable accommodations, stressing that that housing is a vital aspect of Matzen's recovery. Finally, in a gentle tone, Holland hands down a sentence for 20 days in county jail.³⁹ "Don't forget why you're here," Holland says. "Your life is important, and you need to know it's important."

I return to the courthouse on the afternoon of February 13th to attend a sentencing hearing in the case of *State of Oregon vs Gabriel Peter Leiken*.⁴⁰ Although Courtroom 306 opens a little past 1:30pm, I wait around for other spectators to file in before taking a seat in the back of the gallery. A quick survey of the room confirms that all court employees, attorneys, and spectators in attendance are white. Judge Debra Vogt, who has worked as a judge in Lane County for 13 years and serves as the presiding judge of Oregon's 2nd Judicial District, addresses the room to begin the hearing. I look to the defense table and note that Leiken appears to be retaining a private attorney; until today, defendants I observed have all used public defenders. Prosecutor Erik Hasselman reviews the charges brought against Leiken - three counts of Rape III. The state originally charged Leiken with an additional four counts of Sodomy III and three counts of Sexual Abuse II, though these were dropped in exchange for Leiken's guilty plea.

³⁹ Judge Holland credited Matzen with 10 days time served, bringing the total sentence to 20 days in county prison.

⁴⁰ *State of Oregon vs Gabriel Peter Leiken*, No. 18CR63040, (L.C. Feb. 13, 2019).

Hasselmann relays key points of the case, describing how Leiken initiated a sexual relationship with a 15-year-old girl while working as a summer camp counselor in August 2017, and maintained sexual contact with the minor through the end of September. Leiken appears remorseful, though he is likely more concerned with the impact incarceration will have on future educational and employment opportunities; his attorney pleads for a lighter sentence, explaining that house arrest has already cost Leiken his job. The defense proposes alternatives to jail time (such as community service), though the victim's family urges for a more severe sentence, submitting letters from the minor's therapists as evidence of the harm Leiken's actions have had. I make a note that Rape III carries a maximum punishment of five years in prison and \$100,000 in fines. Vogt is stern, but ultimately sentences Leiken to just 60 days in county jail for each count; this time is to be run consecutively, totaling to six months in custody and 36 months of supervised probation. Additionally, Leiken must pay \$25,000 in court fines, and \$20,000 to the victim's family for restitution.

Observations: Outside the Courtroom

In my visits to Lane County Circuit Court, minutes in the courtroom seem to pass like hours. It is not uncommon for court to run behind schedule, thus creating lengthy lull periods in-between cases. Drug court and landlord-tenant court run very regularly throughout the day, though given that criminal cases are the focus of my research, I do not sit in on these hearings. Consequently, there are many times I find myself strolling down hallways with little to do except observe my surroundings.

On January 31st, I float through the floors of the building while waiting for hearings to begin in Courtroom 302. The courthouse is crowded with people, many of

whom are anxiously pacing the hallways or discussing their trial. I cannot share in the emotion or urgency of this crowd; this disconnect reminds me that I am an outsider. Just as I take a seat in front of Courtroom 307 (where landlord-tenant disputes are held), a middle-aged white woman angrily bursts into the hallway. She takes a seat next to someone who seems to be a complete stranger, and immediately begins loudly complaining about how the judge is a “moron”. The woman is indignant, griping that the judge had no right to inquire about her father’s annual salary or why she doesn’t have custody over her 16-year-old son. I shift in my seat uncomfortably and look around; no one else appears to be listening to her rant. I notice that everyone here - courthouse personnel, attorneys, and defendants - is white. Given the racial demographic of Lane County, this turnout is unsurprising. I think to myself that although I may feel intrusive, my race actually allows me to blend into this space.

I soon learn to expect slow days in court. On February 5th, for example, I was at the courthouse for three hours and did not observe a single hearing. The court timetable was as full as ever, yet two courtrooms listed on the schedule remained closed and vacated the entire afternoon. The courthouse follows a rhythmic schedule that allows for periodic downtime; punctuality is preferred, but not imperative. In moments where there is little to do, I study the people and interactions around me. On February 12th, I sit in the hallway and watch two security guards pace the hallways; the men, both white and elderly, are lackadaisical in their patrol. At one point, one of them takes a seat outside Courtroom 202 and stares forward blankly for several minutes. A secretary passes by in the lobby and jokes, “You should at least take a couple laps to make yourselves look busy.” My fieldnotes are peppered with short annotations detailing

exchanges between colleagues; in contrast to the formality of court, these moments feel familiar.

On February 27th, I narrowly miss a pre-trial conference hearing in the case of *State of Oregon vs Andrew Dalton Capps*.⁴¹ Capps has been charged with Manslaughter I, Failure to Perform the Duties of a Driver, Driving Under the Influence of Intoxicants, and Reckless Driving for his role in a fatal drunk driving accident from December 2017. I watch the courtroom empty into the hallway, listening intently for any information regarding the proceedings. To my right I overhear two white men in suits talking; based on the conversation, I assume these are the defense and prosecuting attorneys from Capps' case. One says, "We could do eight months for that charge." The second man takes a long pause before replying, "I'll get that conversation started with him." The two are friendly, joking with each other as they say their goodbyes.

Clackamas County Circuit Court (July 2019)

My work in the Lane County Circuit Court concluded in March; shortly thereafter, I moved from Eugene to Portland, Oregon. This move allowed me to briefly continue my research in Clackamas County in July 2019. The Clackamas and Lane County Circuit Courts are comparable in size and activity, though unlike Lane County, Clackamas County's court does not share space with a host of other county offices.⁴²

I make my initial visit to the Clackamas County Circuit Court early in the morning on July 1st. The courthouse guards are strict and wary of new visitors; when I

⁴¹ *State of Oregon vs Andrew Dalton Capps*, No. 19CR04201, (L.C. Oct. 10, 2019).

⁴² The District Attorney and Civil Division of the County Sheriff are the only other county offices housed in the Clackamas County Circuit Court.

empty my bag at the security checkpoint a guard informs me that I am not permitted to use a laptop to take notes inside the courtrooms. Although I am completely baffled by this rule, I apologize and leave to store my computer in my car. I consistently used my laptop in Lane County and was never barred from bringing it into the courtroom. When I re-enter the building, I head towards the information desk and raise my phone to photograph the court calendar - the moment my camera clicks, I hear a voice from behind me shout “No photos!” I turn to see a female guard walking briskly towards me, saying, “You’re going to need to delete that right now. The schedule is private.” Again, I am puzzled; the circuit court calendar is available online for public access. I decide that arguing this point is not worth the trouble and comply when she insists on watching me delete the photo from both my camera roll and “Recently Deleted” file. My hold-ups with security have made me late to the first hearings of the day. I start to jog to Courtroom 9 but get stopped in the stairwell by yet another security guard. This man merely smirks and asks, “What? Late to court?” Exasperated, I continue up the stairs silently.

Observations: Inside the Courtroom

The environment of the Clackamas County Courthouse bustling and lively. I watch as attorneys and judges transition from case to case with ease, taking breaks only when there is nothing left on the docket. I spend several hours in Judge Heather Karakeika’s fast-paced courtroom on July 1st, though taking thorough notes proves to be a difficult task without access to a laptop. Karakeika, a white woman, has worked as a circuit court judge for over six years. The first hearing I observe is the *State of*

*Oregon vs Troy Daniel Stiles.*⁴³ Stiles, who is a 32-year-old white man, was convicted of Forgery I in June; he is now ordered to undergo a mental health court treatment program and must find suitable housing to reside in during a year-and-a-half supervised probation period. Judge Karakeika works efficiently throughout the remainder of the day while maintaining a calm and respectful demeanor.

Observations: Outside the Courtroom

I return to the courthouse on several occasions over the course of the next two weeks, though each visit last only an hour or two. As in Lane County, the Clackamas County Circuit Court tends to deviate from schedule. I spend a considerable amount of time in the hallway waiting for court to start, never knowing if a hearing has been postponed. On July 9th my only field notes are taken from a conversation between an attorney and his elderly client. I overhear the client express concerns about entering a guilty plea, though his lawyer assures him that “In this county, 95-98% of the time you reach an agreement with the District Attorney before trial.” The client taps his feet and simply responds, “I haven’t taken a day off in 15 years.”

Discussion

Further analysis of the results informs a central idea: the courts expel criminals from whiteness, and in doing so, engender an underclass within the echelons of white identity.

The presumption of innocence is a crucial tenet of criminal law, for it establishes the baseline assumption that all humans are innately good-natured. Whiteness is

⁴³ *State of Oregon vs Troy Daniel Stiles*, No. 19CR27398, (C.C.).

conveyed through performances of moral righteousness and purity; this conceptualization rests on the construction of an opposite, fundamentally criminal minority identity. White criminals are improbable villains, the collateral consequence of a system that is largely intended to entrap People of Color. White offenders must navigate an unfamiliar social position as they are excluded from the full privileges and virtues of white identity.

The majority of cases that pass through the Lane and Clackamas County Circuit Courts will never go to trial. In exchange for a guilty plea, the District Attorney offers defendants the opportunity to reduce their charges or receive a more lenient sentence. Given the considerable time, expense, and risks associated with trial, this proposition is difficult to reject. Plea bargains were popular topics of conversation in the courthouse; attorneys discussed settlements in-between trials, jovially negotiating prison terms and charges. Though plea bargains may seem like a preferable alternative to trial, they can be dangerous and marginalizing agreements. Plea bargains pressure impoverished defendants to concede guilt regardless of whether or not they actually committed a crime.

Defendants in this study were often portrayed as victims of their circumstances, implying that crime is a product of hardship, not immorality. In *State of Oregon vs John Gibson*, Gibson cited substance abuse, untreated epilepsy, and lack of formal education as mitigating factors in his case. Ms. Lewis insisted that Gibson's crimes were a reflection of these trying conditions, not his character. However, Judge Holland exhibited little remorse. Morality aside, Gibson already accepted a plea deal; he was at the mercy of the court. Holland indicated that it was the court's moral imperative to

protect the innocent from perpetrators of crime. Holland described the court as if it were a barrier, shielding “the innocent” (white identity) from immoral wrongdoers. Just as whiteness is performed through acts of citizenship, it is expelled through acts of wrongdoing via the courts.

A similar theme is seen in *Oregon vs Matzen*; after witnessing her mother’s own issues with addiction, Matzen used heroin and methamphetamine for over a decade. Cycles of intergenerational drug addiction and poverty are difficult to overcome given that treatment options are limited for lower-income communities. Rather than rehabilitate addicts, the legal system criminalizes drug use. Opioid use is largely a white problem – in 2017, 297 white Oregonians died of an opioid overdose (compared to 15 Black deaths and 16 Hispanic deaths).⁴⁴ Drug addiction ultimately entangles many poor whites with the criminal justice system. White drug users join the criminal underclass of society, a group which the “innocents” must be protected from.

⁴⁴ Kaiser Family Foundation analysis of “National Health Center for Multiple Cause of Death 1999-2017.” Centers for Disease Control and Prevention (CDC). Accessed November 9, 2019, <http://wonder.cdc.gov/mcd-icd10.html>.

Conclusion

The criminal justice system is a white supremacist institution that perpetually reinforces and redefines constructions of whiteness in society at large. This thesis set out to uncover the ways in which white hegemony interacts with criminal justice at a local level and identify how the Lane and Clackamas County Circuit Courts characterize white identity.

This research understands the circuit courts as small-scale arenas that reflect widespread trends; as such, this study illuminates the implications of whiteness in both a structural and interpersonal context. “white” is a relational identity that acquires power and influence through the subjugation of and vilification of other races. This dynamic is ultimately burden on other whites; under the hierarchy of white identity, lower-income whites are marginalized by the power elite. Racially and economically oppressed identities suffer the most mistreatment within the criminal justice system; protected by neither virtue of wealth nor whiteness, these groups are forced into the periphery.

Justice for all must not be an aspiration, but a commitment.

Social equality cannot be realized until the white power elite makes active and concerted efforts to abolish the exclusionary institutions and structures that have defined American society for centuries.

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