CALIFORNIA STATE UNIVERSITY SAN MARCOS

THESIS SIGNATURE PAGE

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE

MASTER OF ARTS

IN

SOCIOLOGICAL PRACTICE

THESIS TITLE: "WE ARE UNPERSUADED:" JUDICIAL DISCURSIVE PRACTICES AND THE DENIAL OF WORKPLACE RACISM

AUTHOR: LILLIAN NAHAR

DATE OF SUCCESSFUL DEFENSE: APRIL 29, 2016

THE THESIS HAS BEEN ACCEPTED BY THE THESIS COMMITTEE IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN SOCIOLOGICAL PRACTICE.

SHARON ELISE, THESIS COMMITTEE CHAIR

GARRY ROLLISON, THESIS COMMITTEE MEMBER

KRISTIN BAKUS, THESIS COMMITTEE MEMBER

4/29/16

4/29/16

4/29/16

DATE

SIGNATURE

DATE

SIGNATURE

DATE
“We Are Unpersuaded”: Judicial Discursive Practices and the Denial of Workplace Racism
Submitted by

Lillian Nahar

California State University, San Marcos

Thesis Committee:

Dr. Sharon Elise, Chair

Dr. Garry Rolison

Dr. Kristin Bates
Abstract

“We Are Unpersuaded: Judicial Discourses Deny Existence of Workplace Racism”

Framed by critical theory that asserts the ubiquitous presence of racism, this thesis performs a narrative analysis of judicial rulings in Cooper et al v. Southern Co. The judicial discourse practices revealed here demonstrate the assertion of power, denial of racism, and valorization of the white voice that silences Black voices and suppresses their access to justice while legitimizing workplace practices that sustain white privilege.

Keywords: Blacks, racism, white supremacist, colorblind, judicial discretion, inequality
Acknowledgements

Along this journey, I have truly come to understand the meaning of “It takes a village.” It has truly taken a village to bring me to this point in my life in finishing graduate school. I must first acknowledge God because without his mercy, grace and love for me, I would not have made it. I thank him for giving me amazing parents who loved me and taught me to always believe in my dreams. They were amazing cheerleaders, and although they are no longer physically here, I know they are still here in spirit cheering me on. My husband has always been there for me in ways that I cannot begin to express. My sons Taj and Nolan have loved me throughout this journey are my life’s greatest inspiration. My son Taj would never let me say “can’t” unless it was used with quit; he would never let me give anything less than 110 percent. My son Nolan always encouraged me to do my best and reminded me that when I have done my best God will do the rest. My aunt Mildred continued to cheer me on after I lost my mom, my number one cheerleader. My siblings loved and encouraged me. Rhonda has been an amazing friend and reminds me that there is a difference between your mind and your brain and that God will see me through the journey. Norma knew me better than I knew myself; at some of the most challenging times, she would tell me “you are going to be fine.” To Michael O. selflessly spent hours teaching me graduate writing, empowering and encouraging me to ensure my graduate journey success. I could not have made it without him. Dr. Smith taught me that anxiety collapses time whenever I would stress about a deadline. My thesis committee, Dr. Elise, Dr. Rolison and Dr. Bates, are the most brilliant sociological minds in academia. You poured your best into me so that I could achieve great success. I thank Thedis for your support. I thank all my friends who loved me through. I thank my cohort, especially Matt, Christine and Rosa, who have made my time in this graduate school more bearable. Together we have all laughed, stressed, cried, encouraged and carried each other across the finish line; we would never let the other quit. I could not have made it without all you, to all of you from the bottom of my heart, THANK YOU!
Dedication

This thesis is dedicated to all Black Americans who struggle daily in America with inequality, oppression and marginalization because of racism. I stand with you, your experiences are real.
# Table of Contents

INTRODUCTION ...................................................................................................................... 1  
The Corporate Journey ........................................................................................................ 3  

STATEMENT OF THE PROBLEM .......................................................................................... 5  
Historical Background .......................................................................................................... 5  
The Court’s Impact ................................................................................................................ 6  
White Supremacist Ideology ................................................................................................... 8  
Racism and Health ................................................................................................................ 8  
Racism ..................................................................................................................................... 9  
The Redress Process ............................................................................................................. 11  
Institutionalized Racism ........................................................................................................ 13  
The Equal Employment Opportunity Commission ................................................................ 14  
Terms: ..................................................................................................................................... 14  
The process to file a claim ....................................................................................................... 15  
Equal Employment Opportunity Commission Statistics .................................................... 19  

LITERATURE REVIEW ........................................................................................................... 21  
Black Americans and the Workplace Experience ................................................................ 21  
Racial Discourse .................................................................................................................... 25  
Judicial culture, biases ......................................................................................................... 28  
Foundation of a racialized court system .............................................................................. 30  

THEORY .................................................................................................................................. 32  
Constitutional Contradictions ............................................................................................... 33  
Interest Convergence Principles .......................................................................................... 33  

METHODS ............................................................................................................................. 36  
EEOC v. Georgia Power Co. .................................................................................................. 38  

THE FINDINGS ....................................................................................................................... 44  
Silencing the Collective Black Voice ..................................................................................... 45  
The Power of “We” ............................................................................................................... 47  
Double Standard of Evidence ............................................................................................... 49  
Colorblind Epistemology: Denying Racism .......................................................................... 51  
White Supremacist Ideology/Validates Racist Behavior ..................................................... 54  
Valorizing the White Voice .................................................................................................. 55
Denial of Historical, Racial Trepidation Power of the Noose ........................................56
Judges’ languages and rulings reveal White supremacist ideology ..............................63
Judicial Discursive Practices Deny Blacks Redress .......................................................65
RECOMMENDATIONS ..................................................................................................67
CONCLUSION ..............................................................................................................70
References ..................................................................................................................74
INTRODUCTION

The great American dream belongs to every American citizen. It is a right that is inalienable and provides equal opportunity to achieve success and prosperity through hard work and determination. What it does not say is that this dream was designed for white Americans. Today in 2016, the great American dream continues to elude Blacks in America.

After the Civil Rights Act of 1964, government intervention regarding racial discrimination was prevalent. Programs like Affirmative Action helped to carve limited paths for Blacks and women that had previously been blocked. The effects of these actions became quite visible in the 70s. The 70s was an important era for Blacks and women due to the social outcry and social movements demanding equality for all Americans. These movements created new legislation and gave birth to new government agencies like the Equal Opportunity Employment Commission and Title VII to address racial discrimination employment issues and to seek redress for those who have been subjected to workplace racial discrimination. Corporate America began to selectively embrace Blacks and women by allowing them access to “high profile” employment opportunities and promotions they had been previously denied.

I benefit from the new climate for Black Americans that granted access to upward career mobility made me a beneficiary. However, Corporate America supported a climate that incorporated covert and overt racism as normal aspects of the workplace. Black employees were subjected to racism when applying for positions, seeking equal pay, trying to advance careers, accessing training, networking opportunities, engaging in
mentorship programs and receiving unfair discipline. These are a few examples of the ongoing discrimination that prevailed for Blacks in the workplace, even those given supervisory or management titles and prominent positions.

The process to seek redress for workplace discrimination is elusive. Blacks are subjected to a system of governance and a judicial system that determines whether a racial discrimination experience meets a poorly-defined standard of what constitutes race discrimination. This process is often a platform where Black Americans face the headwinds of structural racism and where they are denied justice. Throughout this thesis I sought to expand the redress process to see what kinds of obstacles Black Americans are forced to navigate when seeking justice (Bell 1987; Hiech 2008; Moore 2014).

This thesis also examines how the state sanctioned judicial system empowers judges without oversight, the ability to practice judicial discretion that reflects a White supremacist ideology and results in Black’s disadvantage. This thesis examined covert institutionalized racism, racist culture, and impact of negative stereotyping, challenges of the governing system that creates marginalization, oppression, and inequality of Blacks in America. What the justice system creates for Black Americans is injustice (Moore 2014). This thesis seeks to answer the question, “What are the discursive practices judges use to deny Blacks redress in cases of race discrimination in the workplace?” This thesis looks specifically at Black Americans navigating this process.

In theory, racial discrimination of Black Americans in the judicial system should have been eradicated with the outlawing of overt racial discriminatory laws, practices, and the passing of the Civil Rights Act of 1964. However, realism theory would suggest that overt racism of old is today’s covert racism that is embedded in the governance in
America's institutions (Omi and Winant 1986). Black Americans are denied access to justice by the institutions that are designed to provide justice for all Americans.

**The Corporate Journey**

After civil rights legislation was passed, the government encouraged corporate America to accept Blacks and women into their workforce, especially women of color. My career escalated quickly through the corporate ranks. I recall an interview that brought me face to face with the raw ugliness of racism. It was the fourth and final interview for an upper management position. I had advanced through the first three stages of the process for this position. I was now being interviewed by the regional vice-president, managing director, and two other department high ranking company officials.

The job required relocation. I was asked if I had considered a place to live within the new location. I responded “yes sir, I have.” There was the anticipation of a job offer. Therefore, I arrived two day early to find the location I felt would be best suited for my needs. I provided the name of the community I considered as an appropriate community. Immediately there were disturbing loud gasps from each of the management team. The regional vice-president spoke and said “oh no, you do not want to live in that area; there are too many ‘Niggers.’” Now, over a quarter of a century later, I still feel the sting and smell the stench of being confronted that day with such overt racism! This experience was very powerful on two fronts. It reveals the ideology of a (vice president of a fortune 500 company) powerful white male. It also speaks to how comfortable he was with it that he saw no reason to hide that fact that he would not want me to live with “niggers.”

Because I did not have the typical features that white Americans use to identify Blacks, they missed the fact that I was a Black female. In fact, I did not discuss my racial
background until after I was hired. Instead, I accepted the position and began the journey through a corporate world. I found racism to be the norm, not the exception. As a manager, responsible for both rewarding my team for good performance as well as the discipline when violations occurred, I was challenged by my superiors when I wanted to acknowledge a Black employee for outstanding performance as outlined in the company’s management manual. Whenever a Black employee violated a minor company policy I was instructed to escalate the punishment. However when a white employee would engage in the same violation as the Black employee, I would be admonished by my superiors for being too hard on the white employee. I was told that I had to be more flexible if I was going to be a good manager. It was clear to me that there were two separate sets of managing procedures and standards, one for the Black employees and one for white employees. There were days that I felt like an overseer at a slave plantation whose primary function was to make sure the Blacks knew their place that they stayed there.

This two tiered system of managing based on race is not just an act of injustice that creates inequality; it actually causes health issues for Black Americans who have to live and work in hostile environments that are driven from a point of racism. This racist system of management bias creates a stressful and hostile work environment that over time affects the health of Black employees across all industries (Lukachko, Hatzenbuehler and Keyes 2014). A recent study revealed that racism plays a vital role in the health of Black Americans; it weakens the health of Black Americans and causes them to be more susceptible to diseases. (Lukachko, Hatzenbuehler and Keyes 2014).
Black Americans are subjected to work environments that are more hostile, demanding and stressful than their white counterparts. Due to workplace stress, Black Americans have a 30% increased risk of heart disease, 40% higher risk of hypertension, and 10% increased risk of obesity. Additionally, Black Americans have a life expectancy of 10 years less than their white counterpart; Black Americans’ overall salary for the same job will pay them 12% less based solely on race (Lukachko, Hatzenbuehler & Keyes 2014).

The racist climate and culture that creates hostile environments and negative health issues for Blacks in America does not exist in a vacuum nor without the knowledge of those in power of America’s governance. America, from its inception until today, has always been cognizant of racial inequality in society (Omi and Winant 1986). The state has used race, color and ethnicity to determine one's access to education, income, liberty, prosperity, political rights and justice (Omi and Winant 1986).

**STATEMENT OF THE PROBLEM**

**Historical Background**

According to Omi and Winant, white American hegemony has always created perilous environments for with people of color, that benefits whites. Native Americans faced genocide at the hands of white Americans. Black Americans were subjected to slavery, oppression, segregation, and marginalization. Asian communities were ostracized when trying to assimilate into American society (Omi and Winant 1986). The relationships that America has historically created with people of color revealed how American’s cultural, political, and economic system is shaped by a white supremacy
racist philosophy that is still present in governance today. This is evident in the limited positive impact that civil rights legislation has had on the lives of Blacks in America (Omi and Winant 1986). When Blacks are discriminated against in the workplace, in spite of Title VII, there is a failure for Blacks to have reparation.

**The Court’s Impact**

The Supreme Court’s construction of a limited scope and very narrow definition of what constitutes racial discrimination in the workplace has created a canyon between justice and injustice for Black Americans seeking redress for workplace race discrimination cases (Moore 2014). Moore argues that the court’s scope places Blacks at a disadvantage when trying to meet the standard in establishing that they have been impacted by discrimination in the workplace (Selmi 2001; Moore 2014). The court places an unnecessary burden on employees by the standard of proof the courts require for an employee to establish that a race discrimination act has occurred in the workplace (Williams and Sprigs 1999; Hirsh 2008; Moore 2014). The courts require the employee, who is seeking redress for a racial discrimination experience, to present specific proof of what the courts deem as conscious, horrible objectives of an employer before the grounds for racial discrimination can be satisfied. Moore believes that this is unfair and creates an unnecessary burden on the plaintiff (Selmi 2001; Moore 2014).

However, in a sex discrimination case a plaintiff (employee) does not have to prove the defendant's (employer’s) intent. They only have to show the act occurred or that they felt that it occurred (Williams and Sprigs 1999; Selmi; Moore 2014). Constructing such a limited definition of workplace racial discrimination denies Black employees the rights
for remedy when that threshold is not met, leaving them with no recourse (Brown, et.al. 2003; Moore 2014).

When racial discrimination cases are adjudicated fairly and without a White supremacist lens, justice can prevail and begin to change the landscape of radicalized policies (Moore 2014). The courts have the power to facilitate change that will provide real justice and equality for Black Americans through the power of persuasion and the ability to mandate institutions and organizations to modify or abolish employment policies and procedures that create inequality in the workplace (Skaggs 2009). Scholars have collectively argued that when judges, who preside over racial discrimination cases, bring a White supremacist lens to analyze the fact of the case, the judicial process becomes problematic (William and Mason 1998; Selmi 2001; Moor 2014). This was evident in the Selmi study that revealed 98% of employment racial discrimination cases that are decided by a judge in a pretrial decision are ruled in favor of the employer (defendant) (Selmi 2001).

Holding judges accountable, for racial biases in their rulings that deny Black Americans the justice they deserve is essential to facilitate real change in the justice system (Selmi, 2001; Moore 2014). When a judge rules to dismiss or erase in a preliminary hearing, he is saying that there is not enough evidence against the defendant to have a trial where the evidence would be heard before a jury. The Black employee’s desire for justice is denied, and the radicalized discriminatory practices of the employer are deemed legitimate by the judges’ rulings (Darity, and Mason 1998; Selmi 2001; Hagen 2011). This both undermines the judicial system and relegates Black Americans to the margins of society where inequality, not justice, prevails.
White Supremacist Ideology

White supremacist ideology, a belief that whites are superior in every facet of being, and due to being superior, place themselves as more deserving of power, position, and wealth and everyone else should be subject to them, plays an integral role in perpetuating inequality and destabilization of Black life in America. It is embedded in American culture, society, institutions and system of governance. It is executed through the creation and applications of policies, laws and whites in positions of power. (Omi and Winant 1986; Brown et. al, 2003; Daum, and Ishiwata 2010). White supremacist ideology impacts decisions about Black Americans’ lives in, employment decisions, their career success, what neighborhoods they will be welcomed their socio-economic status, and their quality of life (Daum, & Ishiwata, 2010; Moore 2014).

Collectively, White supremacist ideology and institutionalized racism work cooperatively in a synergistic manner that orchestrates the advancement, wealth and protection of white Americans that result in the marginalization and discrimination of Blacks in America. White supremacist ideology is the thread that holds racist beings together and the thread that ties Black Americans down. Racial inequality is what is created and perpetuated when White supremacist ideology and institutionalized racism work in unison. (Hirsch 2008; Daum & Ishiwata 2010; Moore 2014).

Racism and Health

Racism, a behavior that suppresses and marginalizes people of color based solely on their race through the use of stereotypes, creates struggles against inequality, disparate treatment, and perpetual race discrimination in the workplace that have a high price tag that Black Americans pay with their lives (Warner and Hayward 2006). There is
additional stress that Black Americans experience in the workplace that is not experienced by their white counterparts. In the workplace, stress has significant impact on Black Americans’ health, welfare, and life expectancy (Warner and Hayward, 2006). Black Americans who are denied the opportunity to raise their socio-economic status through access to higher paying opportunities and careers continues to be a source of stress that perpetuates health issues for Blacks.

“The race gap between white and Black men’s mortality is a national tragedy” (2006). Chronic stress in the workplace increases the occurrence of hypertension, diabetes and stroke; Blacks are more likely to have multiple fatal conditions than whites. (2006). Although the courts might find no direct negative impact due to racial discrimination, an overall negative impact exists in a workplace where disparate treatment and perpetual race discrimination exists (Moore 2014; Huffman and Cohen 2004).

Racism

For over a half of a century Black Americans like Dred Scott, Brown (Brown v. Board of Education), the Cooper Group, and Black employees across America have been subjected to a judicial system whose fiber is deeply woven with racism. Racism in America is pervasive, present in our laws and all aspects of life for Blacks in America; unfortunately, our judges have not been inoculated against racist ideology.

More than a half of a century after Civil Rights legislation was passed to give all Americans equality, racial inequality and structural racism continue to be a defining characteristic of the social structure in America (Moore 2013). The Civil Rights Act of 1964 on the surface was a move forward as if outlaw overt racism and sexism (Omi and
Winant 1986). White women were the largest demographic that benefited from civil rights legislation (Omi and Winant 1986; Brown et al, 2003; Moore 2013). Not all Black Americans benefited from this new legislation; the goal was to do just enough to quiet the base of those Americans whose social conscious wanted change without giving total equality as the radical voices demanded (Omi and Winant 1986).

Racism dehumanizes Black Americans and creates structural imbalances in America between Black and white cultures. This is evident when Supreme Court Chief Justice Taney, ruling in the Dred Scott case, stated that a Black man has no rights that a white man should honor. This dehumanization is also present in the wording of The U.S. Constitution that held a Black person is only worth \( \frac{3}{5} \) of a white person. The dehumanization continued with the 15th Amendment that says that a Black American, when their right to vote has been taken, must appear before an attorney general with 19 other Blacks who have experienced the same violation, before their claim can go forward. Without the other 19 to validate the violation claim, the Black American simply has no recourse. It is also seen in the Cooper case at hand, when Judge Orinda dismissed the historical racial significance for Black Americans harassed by coworkers with a hanging noose. The actions and words of these justices will be forever engrained in our judicial system. It is this White supremacist ideology in our judicial system that perpetuates racial inequality and a tiered system of justice.

Any vestige of racism in a tiered equality system is problematic and is a contradiction between democratic values that are perceived as the American Creed and the inequality that Blacks experience while in corporate America and the judicial system. One such vestige is judicial discretion without oversight. This is the nation’s dilemma,
and a sociological problem. This ideology creates a society that is divided by race that is separate and not equal. New definitions of when judicial discretion may be applied must be implemented to ensure that all peoples are treated equally under the law, that a law must stand as written instead of how the judge decides to apply the law. A common sense of equality must prevail. “This kind of society [radicalized] cannot stand and will concave with the pressure of injustice; we as a nation, must continue to speak out against these injustices and demand justice to move forward”. — Martin Luther King Jr.

**The Redress Process**

Although overt racist laws have been outlawed, Black Americans today are still subjected to covert racism that creates oppression and marginalization of Blacks. Racism is not just expressed in individual attitudes but is part of a complex system that is entrenched in power, position, and capital between the races (whites and Blacks) in society (Omi and Winant, 1986; Bonilla-Silva 2015). Black American employees are challenged daily. They are often forced to work in a hostile work environment and subjected to racial tension including but not limited to racial jokes, lower evaluations and higher performance demands than their white colleagues, and harsher discipline by their superiors. Proving and reporting these work conditions is extremely arduous.

The burden of proof that racist acts occur is placed on the employee. The employee must show that there was racial intent on behalf of the employer to cause them harm. The employee must prove what the employer was thinking to establish the burden of proof. Even when an act is proven to have occurred, if the investigators, judge, or the reviewers in the redress process do not find that the act was intentional and driven from a racial intent, the employee does not have grounds to go forward with the claim.
The process requires that complaints first be presented to the employer and then go through a series of steps. This is to allow the employer to make corrections as necessary to address the issue. If no action is taken, the employee files a claim with the Equal Employment Opportunity Commission or one of its subsidiaries like the Fair Housing and Employment agency. After a very lengthy investigation of interviews and document assessment, the agency decides if acts in question meet the standard of their interpretation of race discrimination. If the acts do not, the case is dismissed. If the case meets the standard, efforts are made to settle the case by mediation, a judge, or a jury. This process will be discussed in detail later.

The passing of Civil rights legislation created a false notion that dismantling racist law would cause racism to disappear. The legislation constructed the written laws that proclaim equality for Black Americans; it states that Blacks are given the same rights under the law as white Americans (Moore 2013). These laws provide redress and are empowered to effect social change and produce justice when violators are held accountable for their actions (Honoree, Terpstra and Friedl 2010). This legislation never addressed the culture, attitudes, position or power that white Americans would fight to protect (Brown et al. 2003; Hirsh 2014).

Enforcement of anti-discrimination laws for Black Americans in racial discrimination cases has been minuscule in producing equality for Blacks or structural changes in the system. It is here that we see the power of covert racism in the hands of racist judges refusing to hold employers accountable for acts of race discrimination. Refusing to hold employers accountable for acts of discrimination legitimizes racism in the workplace and is a leading cause of racial inequality (Hirsh 2008; Skaggs 2008;...
Moore 2014). Covert racism provides a cover to racist justices who perpetuate racial inequality in the courtroom.

Laws have changed from allowing overt racism to be the law of the land, to making it extremely laborious to prove the existence of covert racism. Covert racism conceals a system of governance that creates devastating impact for Blacks in their economic, political, and social positions. This impact of covert racism is explained by negative discourse and stereotypical characterization of Blacks suggesting that Blacks are at the margins of society because of life choices, laziness, inferior intellect and are beings of mediocrity, while denying the system of governance that creates structures, laws and policies that perpetuates this existence (Bell, 1987; Brown et al, 2003; Hirsch 2008; Bonilla-Silva 2015).

**Institutionalized Racism**

The social construction of race, social laws, private prejudice was designed with a White supremacist ideology and it works together in America to create racial hierarchy in our society in which whites are at the top (Brown et. al, 2003; Lipsitz, 2006; Bonilla-Silva 2015). The formation of race in America has been created to ostracize, oppress and disparage people of color while advancing the opportunities and power for white Americans (Omi and Winant 1986; Brown et al., 2003; Bonilla-Silva 2006). Racism is embedded in White supremacist ideology that dwells and governs American institutions and courtrooms; Steely Carmichael (aka Kwame Ture) defined this as institutionalized racism. It is societal culture and governing patterns that cause harsh and detrimental conditions for groups on the basis of race or ethnicity (Omi and Winant 1986; Brown et al., 2003; Bonilla-Silva 2015). This system has been able to exist behind the banner of
formal legal equality. The existence of the written law deflects society from critically examining and understanding the bona fide life experience of Black Americans which is inundated with racial discrimination practices, in spite of the laws (Brown et al 2003; Hirsch 2008; Moore 2014).

**The Equal Employment Opportunity Commission**

To understand the redress process for racial discrimination in the workplace, we must begin with the Equal Employment Opportunity Commission which is the first point of contact to file a race discrimination case. Understanding the EEOC begins with terms that are used to navigate the system.

**Terms:**

*Merit Resolutions*: Charges with outcomes favorable to charging parties/ employee/s and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations.

*No Reasonable Cause*: EEOC's determination of no reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. The charging party may exercise the right to bring private court action.

*Reasonable Cause*: EEOC's determination of reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation. Reasonable cause determinations are generally followed by efforts to conciliate the discriminatory issues which gave rise to the initial charge. Note: Some reasonable cause findings are resolved through negotiated settlements, withdrawals with benefits, and other types of resolutions, which are not characterized as either successful or unsuccessful conciliations.
**Settlements Negotiated:** Charges settled with benefits to the charging party as warranted by evidence of record. In such cases, EEOC and/or a FEPA are a party to the settlement agreement between the charging party and the respondent (an employer, union, or other entity covered by EEOC-enforced statutes).

**The process to file a claim**

Today when employees feel that they have been discriminated against by their employer, they must first file a complaint with the Equal Employment Opportunity Commission (EEOC). Seeking justice through the Equal Employment Opportunity Commission and on to the judicial system is very tenuous and always subjected to a governing representative who determines if the employee’s claims have merit or not. This process is subjective and does not account for racial bias of those that are filtering the evidence of the case brought to them by the plaintiff.

The Equal Employment Opportunity Commission (EEOC) as a governing agent for the state filters the evidence brought by the employee (plaintiff) against the high standard of proof of racial intent, in the initial screening. The employee must declare to be a member of a protected class that is outlined in Title VII. These protected categories are: “race, color, religion, sex (including pregnancy), national origin, age (40 or older) or have a disability. All of the laws enforced by EEOC, except for the Equal Pay Act, require employees to file a Charge of Discrimination with EEOC before they can file a job discrimination lawsuit against their employer. Employees only have a maximum of 180 days to file a claim after the alleged discriminatory act occurred. If it is not filed within the time limits, no future actions can be taken.

The plaintiff (employee) must present evidence to support “reasonable cause” of
racial discrimination. If the evidence does not meet the standard of racial intent set by the department, the claim is not processed and the claim is closed for “no reasonable cause”. If it does pass the initial screening, it is then passed on to an investigator who investigates the documents, witnesses brought by the plaintiff that supports their cases against the employer’s statement. If the investigator finds the employer's statement more credible as to the facts of the case, the investigation stops and no further action will be taken by the government agencies.

If the plaintiff prevails at this stage of the process, the case is sent to the government’s legal department. Their function is to determine what specific law was violated by the employer. The evidence is further scrutinized to determine if it strongly establishes the employer's intent of racial discrimination against the employee. The legal team also needs to ensure that the evidence will be able to survive an employer’s request for a motion of summary judgment that goes before a judge. A motion of summary judgment is the employer’s legal team request of the judge to dismiss the evidence that the employee presented as being without merit. Judicial discretion give the judge the power to dismiss the case as the employer may request. When the motion is granted by the judge, no future action can be taken.

Once charges have been substantiated by EEOC’s investigation team, the employee is encouraged to settle the case through settlements (negotiations). If an investigation finds no violation of the law, EEOC ends their involvement and give the employee a Right to Sue letter. This letter allows the employee to hire a private attorney who can file charge directly with the civil court. If a violation is found, the government agency tries to reach a voluntary settlement with the employer. If no settlement is reached with the
employer, through negotiations, the case is then referred to the agencies legal department or the Department of Justice in certain cases. The legal department will make the determination, whether or not the agency should file a lawsuit. This decision is based on how strong the evidence is and how likely the judge will use judicial discretion to rule and dismiss the evidence and the case. The legal department will only take cases forward that have overwhelming evidence and egregious acts of the employer which proves prima facie. Prima facie is “sufficient evidence to establish a fact or raise a presumption unless disproved or rebutted” ("Prima facie, n." 2004). At this point of the process the fight for redress and justice is in peril. In this phrase, we may begin to more clearly answer the question: What are the discursive practices judges use to deny Blacks redress in cases of race discrimination in the workplace?

If a charge appears to have little chance of success or if it is an area that is outside of the Title VII provision the EEOC may dismiss the charge without doing an investigation or offering mediation. This process is problematic on several fronts. First, the employee has the burden to produce the preponderance of the evidence. It is based on the more plausible, convincing evidence and not necessarily the truth or the amount of evidence. Second, it asks the question does the employee have enough of heavily weighted conclusive evidence that can show what was in the employer brain, when the acts were committed. Thirdly, this system does not address the issue of injury or impact on the employee. If someone hits a person and causes injury and damage to that person, intent is not the focal point or the issue. The one that caused injury will be held accountable to restore the person they injured to being whole. This is why that provision that requires plaintiff to prove intent or to prove what the employer was thinking creates
almost a virtually impossible standard of proof and creates protection for the employer at
the expense of the employee.

If it is substantiated that the employee was negatively impacted by the act of the
employer, but the employee cannot prove the employer’s actions were driven by racial
motives, the government’s legal team will not pursue the case. If the case was being
heard by a judge, at this point the judge would dismiss the case for lack of evidence. Race
discrimination cases are the only discrimination cases that require the plaintiff to prove
intent. By contrast, the employer only has to give another explanation for their actions or
explain away the notion of racist behavior. In sex discrimination cases, the plaintiff only
has to state that they were impacted by the employer’s action and that case can move
forward.

This system does not provide a fair remedy for the affected employee. This system
fails to create redress for racial discrimination cases. The employee is then forced to take
on the financial burden to hire a private attorney to take the case forward. This is a
burden which most employees cannot afford. If no private attorney is retained, the
employee has no other course of action and the case is dropped and the race
discrimination continues.

Today, navigating the judicial system, and trying to secure redress for race
discrimination creates a greater level of uncertainty due to an un-standardized application
of what constitutes racism in the eyes of the judges. It is here under judicial discretion
that implementation of racist ideology is evident. The state sanctions judges, without
oversight, and grants them the authority of judicial discretion that enables them to engage
in racial bias rulings against Black Americans (Moore, 2014; Honoree et al. 2010).
Judicial discretion can be impacted by harmful negative narratives, negative storytelling, and the media’s framing of Black Americans. This empowerment allows a judge to analyze a case through a racialized lens and reject any and all evidence or witnesses that is presented by the plaintiff (employee) that would establish the prima facie of the case (credibility) (Hirsh and Cha 2008; Moore, 2014).

Once a judge decides the plaintiff has not created a prima facie or the case is without merit, the case is dismissed and cannot be heard by a jury. No further action is taken against the employer. Approximately 98% of the cases that are presented in front of the judge are dismissed by the judge, and a motion of summary judgment is granted to the employer by the judge (https://www.eeoc.gov/eeoc statistics). In essence, the judge agrees with the employer who says no racial discrimination occurred. The employee is left with no real recourse. If the employee returns to that employer, the discriminatory practices continue and the employee can face a more hostile work environment.

**Equal Employment Opportunity Commission Statistics**

From 2004 through 2014 the Equal Employment Opportunity Commission received 348,674 claims of race discrimination. Only 3.8% of the cases filed were found by the EEOC to have merit which had a favorable finding for the employee; whereas 96.2% of the cases were found not to have merit and the cases were dismissed. The statistics do not support the notion that a specific law or social program significantly changed the average of complaints or the findings. Those cases that go before the judge either with a private attorney or with an EEOC government attorney are subjected to judicial discretion. Only two percent of those cases go beyond a judge to a jury. Over 90% of those cases are deemed by the judge, through judicial discretion to be without merit (see Table 1).
### Table 1. Statistical Data from the EEOC 2004-2014

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts</td>
<td>27696</td>
<td>26740</td>
<td>27238</td>
<td>30510</td>
<td>33973</td>
<td>33579</td>
<td>35890</td>
<td>35395</td>
<td>33512</td>
<td>33068</td>
<td>31073</td>
</tr>
<tr>
<td>Settlements</td>
<td>927</td>
<td>2801</td>
<td>3309</td>
<td>2945</td>
<td>3069</td>
<td>3065</td>
<td>3325</td>
<td>3307</td>
<td>3020</td>
<td>2709</td>
<td>2274</td>
</tr>
<tr>
<td>Percentage</td>
<td>9.9</td>
<td>10.2</td>
<td>11.7</td>
<td>11.4</td>
<td>10.8</td>
<td>9.8</td>
<td>8.9</td>
<td>8.2</td>
<td>7.9</td>
<td>8.0</td>
<td>7.5</td>
</tr>
<tr>
<td>No Cause</td>
<td>20166</td>
<td>18608</td>
<td>17324</td>
<td>16773</td>
<td>18792</td>
<td>20530</td>
<td>26319</td>
<td>28602</td>
<td>28111</td>
<td>24150</td>
<td>21770</td>
</tr>
<tr>
<td>Percentage</td>
<td>68.1</td>
<td>67.9</td>
<td>66.7</td>
<td>64.8</td>
<td>66.4</td>
<td>66.0</td>
<td>70.1</td>
<td>70.6</td>
<td>73.2</td>
<td>71.1</td>
<td>71.4</td>
</tr>
<tr>
<td>Cause</td>
<td>1189</td>
<td>1161</td>
<td>1016</td>
<td>998</td>
<td>1061</td>
<td>1201</td>
<td>1330</td>
<td>1284</td>
<td>1179</td>
<td>957</td>
<td>655</td>
</tr>
<tr>
<td>Percentage</td>
<td>4.0</td>
<td>4.2</td>
<td>3.9</td>
<td>3.9</td>
<td>3.7</td>
<td>3.9</td>
<td>3.5</td>
<td>3.1</td>
<td>3.1</td>
<td>2.8</td>
<td>2.2</td>
</tr>
<tr>
<td>Merit Resolution</td>
<td>5204</td>
<td>5129</td>
<td>5232</td>
<td>54178</td>
<td>5565</td>
<td>5796</td>
<td>6222</td>
<td>6212</td>
<td>5744</td>
<td>5278</td>
<td>4429</td>
</tr>
<tr>
<td>Percentage</td>
<td>17.6</td>
<td>18.7</td>
<td>20.1</td>
<td>20.0</td>
<td>19.6</td>
<td>18.6</td>
<td>16.6</td>
<td>15.3</td>
<td>14.9</td>
<td>15.6</td>
<td>14.6</td>
</tr>
<tr>
<td>Monetary Benefits Paid (in millions)</td>
<td>61.1</td>
<td>76.5</td>
<td>61.4</td>
<td>67.7</td>
<td>79.3</td>
<td>82.4</td>
<td>84.4</td>
<td>83.3</td>
<td>100.9</td>
<td>112.7</td>
<td>74.9</td>
</tr>
</tbody>
</table>

*Does not include monetary benefits obtained through court litigation jury awards*
LITERATURE REVIEW

Black Americans and the Workplace Experience

When critically analyzing the experience of Blacks in the workplace, we must examine how racism severely impacts Black Americans’ ability to get hired, receive equal pay, benefits, mentorship, receive internal training for advancement, and their ability to work in an environment that is free from whites' racial hostilities (Collins, 1993; Baldi and McBrier, 1997; Bourne, 2001; Brown et al. 2003).

Racism has been woven so deeply into the fiber of American society and the hegemonic class, that many members of society have become desensitized to their own playbook, positions of power, white privilege, and white supremacy (Collins, 1993; Baldi and McBrier, 1997; Bourne, 2001). Whites refuse to acknowledge how pervasive racism or their privileged position, power or wealth that has been created for them at the expense of Blacks in America.

Sharon Elise’s (2004) article “How Whites Play Their RAce Card,” brings a deeper understanding of white’s position, privilege and the strategies that are in place to enhance and protect that position of power. She uses the metaphor of a card game, where whites are dealt an Ace, the most powerful card in the game that gives whites a path in life of privilege, power, and, wealth. Blacks are dealt a card that could never compete with whites who hold the “rAce card;” whites win with the card they are dealt because they use the card against Blacks and Blacks lose because of it. Whites deny that they have been dealt the “rAce card” or that they have any special power or place over Blacks. (Elise, 2004). Blacks are often expected to shed their cultural self in order to be considered worthy to begin the assimilation process for acceptance into the “game” of
life in America (Baldi and McBrier, 1997; Darity and Mason, 1998; Bourne, 2001; Collins, 1993).

Bertrand, Mullainathan, Baldi and McBrier support the notion that racist culture deems the white hegemonic class superior to Blacks, which in the workplace, reduces Black employees to be subordinate to whites regardless of the Black employee’s positions or titles. It also pressures Blacks to assimilate into white culture by speaking, acting, and performing in a style that whites identify as white culture, in order for Blacks to reduce workplace hostility (Bertrand and Mullainathan, 2003; Blair, 2008). This performance makes Black more palatable to white colleagues and those in authority and less likely to experience hostility based on race (Baldi, and McBrier, 1997; Bertrand and Mullainathan, 2003; Blair, 2008).

According to Darity, Mason 1998 and Hirsh 2008 Black Americans have contributed greatly to their companies’ success and have aspirations to be accepted and succeed as their white counterparts. Opportunities, equality and impartiality have not been present in their quest for employment equality and success. Instead they have been met with discrimination, obstruction, and racism that have impeded their ability to succeed (Darity and Mason, 1998; Ford, 2014; Hirsh, 2014). Unfair challenges and oppression, repression and often time’s cruelty have plagued the Black American’s employment journey (Darity and Mason, 1998; Isaac, A. R., Letha, A 2003; Collins, 2011; Ford, 2014).

Collins, Ford, Isaac and Letha see the aspirations of Blacks to assimilation into spaces in the workplace where whites are dominant and in authority come with a price (Isaac and Letha, 2001). Scholars agree that Blacks pay a cultural cost to be more
acceptable to whites. The cost Blacks pay requires to disconnect from what whites identify as Black culture, including: moving away from predominantly Black neighborhoods, relocating to white ones, disengaging from cultural family traditions (kwanzaa), sending their children to white schools so that they can learn to assimilate at an early age, and accepting the notion that Blacks must work harder daily to prove their worthiness to co-exist in white spaces in the workplace (Collins, 1989; Darity and Mason 1998; Ford, 2014; Hirsh, 2014).

When Black Americans experience racism and hostility in the workplace, they are not random or isolated acts, they are endemic of institutionalized racism. The superior vs. subordinate (master vs. slave) relationships between Blacks and whites are exceedingly entrenched culturally and psychologically within the interactions of Black and white employees (Foeman and Pressley, 1987; Kirschenman and Neckerman, 1991; Huffman and Cohen, 2014; Hirsh, 2014).

Blacks must push themselves daily to endure being ostracized, to perform in hostile work spaces, to endure racist jokes, harsh discipline, less pay than their white colleagues and to dispel negative stereotypes to go beyond obstacles, barriers and survive systemic racism in the workplace (Pierce, 2003; Mongo and Resign, 2010; Light, Resign and Kalev, 2011). Pushing beyond these boundaries can provide a path of assimilation and employment stratification (Light, Roscigno and Kalev, 2001; Pierce, 2003; Skaggs, 2009).

Some scholars agree that Blacks need to assimilate to navigate the terrain of discriminatory practices of employers. They see cultural assimilation as an integral part of employment stratification. According to W.E.B. Du Bois, Blacks in our society live in
two worlds, which “involves the internalization of structural constraints and negative attitudes and values about the ‘raced’ self-present in the general culture. In this view, ‘double consciousness’ involves two cultural identities, each corresponding to a different social role, one Black and one White, at war with one another within each individual African American because of the differing significance of those identities within American society” (Rawls, 2000). Blacks must navigate cultural assimilation strategically if they are going to obtain economic, political, and social opportunities; Blacks have to plot a course along the color line between their double consciousness’s.

Black Americans must build central cultural capital that is recognized, valued and accepted by the hegemonic class (Baldi and McBrier, 1997). This includes white cultural knowledge, skills, and the ability to socialize in white spaces, while speaking their social language on and off the golf course (Bourdieu and Passeron, 1997; Light, Roscigno and Kalev, 2001). These skills are obtained through education, social access, networks, connections, economic capital, which includes but not limited to money and things of value (Bourdieu & Passeron, 1997). These are the power tools for workplace success and they are maintained in limited supply. Blacks have limited, or no real access, to these tools or the knowledge of how to use these tools that will empower them to obtain real success and upward mobility in the racialized job market (Bourdieu & Passeron, 1997 Collins, 1998; Bourne, 2001; Bertrand and Mullainathan, 2003; Maud, 2008). When blacks are forced to oppress or release their cultural self, everyone in the workplace loses. There is richness and strength in the culture of Black Americans that could prove synergistic if they were allowed to embrace it in the workplace.
Racial Discourse

Whites’ denial of the existence of racism and its power are able to blame Black Americans for the problems of race in this country (Brown et al, 2003; Bonilla-Silva 2006). Those who hold on to the belief that Black Americans are solely responsible for the inequalities that they experience in America are holding to a restrictive and limiting understanding of institutionalized racism, power, and the role that racism plays in American power structures (Schuman, and Krysan. 1999; Brown, 2003; Moore, 2014).

The ideology that suggests that Blacks are solely responsible for their position in America causes the discourse to shift away from the influence and impact of racism that creates inequality for Black Americans; suggesting that inequality exists for Blacks, because they are not taking responsibility for their own failures in their own lives. Black Americans are not totally responsible for their position of lack of prosperity, inferior education, money, or power; there is a system of governance in place that prevents Blacks from accessing the tools for success to which whites have full access to (Omi and Winant, 1986; Moss and Tilly, 1996; Mong, and Roscigno 2010; Bonilla-Silva, 2015).

Within the notion that Blacks have less, because they are less, is created by negative discourse of stories that have shaped the white America’s perception of Black Americans. An example of the negative narrative, and the impact the narrative has on Black lives, is that Blacks are on welfare because they do not want to work; however, due to racial injustice, opportunities to work are denied to them. These stories suggest that Blacks only want a hand out and not a hand up (Bell, 2003).

Scott suggests that when negative beliefs and discourse and storytelling about Black Americans are accepted as the dominant truth; it justifies and legitimizes white’s position
of dominance and governance over Black Americans (Scott, 1990; Delgado, 1995). Brown et al state that accepting negative discourse about Black Americans as truth negates the role that the social, political, and economic power structure of white privilege plays, that is embedded in American society (Brown et al. 2003).

Scott argues that there is also less space for public counter discourse narrative that Blacks create about themselves; the counter-narrative speaks to the lived realities of life in Black skin (Scott, 1990). It challenges the beliefs that whites have portrayed about Black Americans that have created negative discourse (Scott, 1990). He further argues that whites have different racialized experiences than Blacks; therefore whites are rarely able to challenge the negative discourse that Blacks have less because of their lack of work ethics and effort (Scott, 1990). Understanding the power of this negative discourse is crucial in understanding how this narrative creates racial injustice in the courts, when Black Americans are seeking redress for acts of racial discrimination. Unfortunately, the judicial system, nor judges presiding over racial discrimination cases, has been inoculated against negative discourse about Black American and their “playing the race card” or asking for something for which they are not entitled (Selmi, 2001 and Moore, 2014).

W.E.B. DuBois’s notion of the two worlds explains how definitions are created by white culture. Simply stated, what one group is, the other is not. When whites are defined as superior, Blacks are inferior. When Blacks are seen as criminals, whites are law-abiding citizens (even when caught in a crime). When whites are seen as hard working, Blacks are lazy. When Blacks are stupid, white people are smart.

Unlike the time period of the Civil Rights era, where racial discrimination was the
law, Moore shows that today we live in a post-Civil Rights era that suggests that equality exist for all, regardless of race (Moore, 2014). This is known as formal legal equality. According to Moore, formal legal equality creates a greater challenge in the battle for racial equality and justice in the courtroom because it provides a written law that justices have as a framework to render, fair, unbiased, and lawful decisions. These written laws provide the framework for judges and are based on law and not a predisposed prejudice (Moore 2014). Formal legal equality gives whites a platform to suggest that America has moved to a color blind society, and if Blacks wanted to have the same power, and position that whites have, they could have it if they would stop asking for handouts and work for it the same way that whites do (Scott, 1990; Selmi, 2001). The belief that racism does not obstruct Black Americans’ ability to be successful is ill conceived and naïve (Omi and Winant, 1986; Scott, 1990; Selmi, 2001; Bonilla-Silva, 2015).

Selmi, Hirsh, and Moore argue that formal legal equality is the written law which presents an allusion that the American justice system has radically changed from the “Jim Crow” legal system that authorized racial discrimination, to a system that seeks equality for all, regardless of color (Selmi, 2001; Brown, 2003; Moore, 2014). According to Huffman, Cohen, and More, formal legal equality states that Black Americans’ are equal to white Americans and have the same rights as all Americans.

Formal legal equality is not effective for creating racial equality for Black Americans in the courtroom because of the power of judges to render decisions that have been influenced by negative racial discourse about Blacks, and judges’ own racial bias (Huffman and Cohen; Moore, 2014). The reason formal legal equality is not effective for creating racial equality for Black Americans in the courtroom, as Selmi and Moore state,
is that the judicial system contextualizes equality for Black Americans in the written law, however the interpretation and application of formal legal equality for Blacks is different than it is for whites (Selmi, 2001; Moore 2014). Scholars agree that this fallacy of judicial equality allows white Americans to continue to deny that racial inequality is paramount in American culture and the judicial system (Bobo, and Smith. 1998; Caldwell, 1999; Brown, 2003; Huffman, and Cohen, 2004; Moore 2014).

Judicial culture, biases

According to Bourne and Hirsh, the judicial system’s culture and structure supports inequality for Blacks in America. (Bourne, 2001; Hirsh, 2013). When Black Americans file racial discrimination charges against their employer through the Equal Employment Opportunity Commission (EEOC), an arm of the judicial system or in the courts themselves, the results of these filings often leave Black employees’ without justice (Bagentos, 2006). Bourne, Selmi and Hirsh examined a series of cases filed by Black employees against their employer with either The Equal Employment Opportunity Commission, or other government agencies. They found that the courts have a culture that is hostile towards Black Americans who file racial discrimination cases. Ninety-eight (98%) of the cases that go before the judges are assessed as being without merit or legitimate charges (Bourne, 2001; Selmi, 2003; Hirsh, 2008). Schuman and Krysan argue that these judicial rulings legitimize employers’ discriminatory acts that perpetuate racial discrimination and inequality (Schuman, and Krysan 1999).

People of color are consistently denied equal justice in America’s judicial system. Judges act outside of the role of impartiality and bring a racist ideology when analyzing the merits of a case when Black Americans are both a plaintiff seeking justice and a
defendant when receiving punishment (Levasseur, 2002; Hirsh, 2008; Moore, 2014). Levasseur argues that racially biased proceedings are not legitimate and that judicial legitimacy is only found when judges apply and interpret the law, from a non-biased perspective (Levasseur, 2002). A study revealed that, when Black Americans were sentenced by white judges, Blacks were more likely to be sentenced to prison for committing the same crimes for which whites received probation. When both white and Black individuals were sentenced for the same crime, Blacks receive harsher sentences than whites (Bushway and Morrison Piehl, 200). Bushway and Morrison Piehl believe the disparate sentencing is a form of institutionalized racism and a cause of inequality for Blacks in America (Bushway and Morrison Piehl, 2001).

An American BAR Association articled, titled “The Color of Justice,” examined some of the issues that sociologists and people of color raised about the inequality in America’s judicial system. According to scholars who study race and the American justice system, there is one law, two judicial systems and several applications of the laws in America’s system of justice. There are a set of applications for white Americans and a different set of applications for Black Americans (Bushway and Morrison Piehl, 2001; Levasseur, 2002; Moore, 2014). To expose this theory of a two tier justice system in America, the Rodney King case was examined. It revealed that the first rule of justice in a criminal case was violated when Rodney King’s right to have a jury of his peers was denied.

The prosecution moved the location from a location with a high population of lower income Black Americans, to a higher income location that was predominately white. The prosecution relied on the impact of racialized negative stereo-typical
characterization of Black men, which is embedded in white upper-middle class communities. That characterization portrays Blacks from low income neighborhoods as criminal, drug dealing thugs, and police as great upstanding citizens who uphold the law and are free from racial bias. This ideology always renders the Black suspect as guilty and deserving of whatever the police do. Black suspects are Black before proven innocent. The theory was successful and the 17 police officers, who beat Rodney King, within inches of his life, while he was handcuffed, were found innocent of using excessive force for the beating of Mr. King. This is White supremacist ideology in action.

**Foundation of a racialized court system**

White supremacist ideology is foundational in constructing the justice system where Black Americans’ rights are subjected to racialized judicial discretion. It was present in the writing of the United States Constitution and is present in major landmark Supreme Court cases, such as Dred Scott. The United States Census Bureau statistic show that Black Americans make up 13.2% of the total population of the United States, yet the Bureau of Justice statistics (BJS) shows that Black Americans are the highest population in America's prison at 37%. One in three Black men can expect to go to prison in their lifetime (BJS 2012). According to Johnson and Secret, White supremacist ideology is embedded in America’s judicial system, and Black Americans do not have access to the same justice that white Americans have (Johnson and Secret, 1990). Johnson and Secret also support the belief that the racism that Black Americans experience today in the application of the law, is similar to the application of the laws during slavery which disproportionately has more severe impacts on Blacks than whites.
According to Johnson and Secret, the origin of differential criminal treatment of Black Americans in the judicial system is in slavery, when white slave owners were authorized by law to punish Blacks for behaviors that were not offenses if whites comported the same behavior (Johnson and Secret 1990). Additionally, it was against the law for Black Americans to defend themselves against whites, even if Black Americans were being attacked (Johnson and Secret, 1990). Legislators who had slaves created different courts for Blacks; they had to ensure that Blacks would be punished more severely than whites to maintain control through fear (Johnson and Secret, 1990). The judges who sat on the bench in the “Negro Courts” to assess the cases were also slave owners (Johnson, Secret 1990). These courts were not governed with impartiality, balanced, or fairness; these courts were radicalized institutions of social control, also known as institutionalized racism (Johnson and Secret, 1990).

The culture of racism in our court system began during slavery (Johnson and Secret, 1990). Today scholars like Selmi, Hirsh, and Moore argue that racism has been relentless in its ability to marginalize, discriminate and adversely impact the lives of Blacks in America, throughout American history. Black Americans’ fight for justice and equality in America, is an ongoing battle and the need for justice still exist today (Selmi, 2001, Hirsh, 2008; Moore, 2014).
THEORY

The intent of this thesis is to use Critical Race Theory (CRT) to answer the question, what are the discursive practices judges use to deny Blacks redress in cases of race discrimination in the workplace? I have use a critical discourse analysis of a racialized case that the Equal Employment Opportunity Commission brought against the Southern Co. and its subsidiaries because CRT explains the underlying message of the content of what is said; CRT pulls back and unearths the meanings of the phrases the judges use. Using Bell’s Critical Race Theory uses narrative stories, what are also known as first-person narratives, to expose colorblind epistemology and concepts of constitutional contradictions, property of justice and interest convergence principles as a guidance, this thesis has revealed the challenging process that the system of governance have created for Black Americans who seek redress for racial discrimination in the workplace. The justice system for Blacks in America is set more to give an illusion of justice than to provide real equality and justice. Judge’s White supremacist ideology and colorblind epistemology has shown to be one the greatest obstacles that Black Americans face in trying to receive redress in the judicial system. Using tenants of Critical Race Theory has revealed the judicial discursive practices used to deny Blacks redress for workplace race discrimination?

There are several major tenets that comprise Critical Race Theory: racism is not abnormal, it is the way society operates and people of color live it as normal life. White hegemony’s positions serve physiological and material purposes: physiological is the position of authority which places Black Americans in position of subrogation, whites in position of wealth, power and influence over the life experiences of Blacks in America
Constitutional Contradictions

Bell lays out the argument that the constitution through which this country was founded was itself a contradiction. The newly formed government itself had fled from Britain and fought for its right to be free and independent. The irony is that the money to fund the war for America’s independence came from slave trade. Jefferson one of the authors writes all men are created equal as endowed by the creator and that slavery was evil, yet he had slaves.

Bell helps us understand the framework of white supremacy, the power dynamic and positional relationship between Blacks and whites that dates back to slavery and the constitution. Slavery created wealth for whites; it was a great source of income. Slavery forged a bond among whites, granting them more rights and gave them a sense of liberty. This came at a severe price; it destroyed the rights of Black Americans (Bell, 1987). Today those same truths exist; the ideology is preserved in White supremacist ideology, and the protection of white Americans’ position of dominance and wealth is still at the expense of Blacks. White will do all possible to protect their power, position and wealth.

Interest Convergence Principles

Bell asserts that the American government will never solve the issue of race, and that is by design. The civil rights laws were never intended to improve the lives of Blacks in America. If Blacks did benefit from any of the laws that were enact it was a by-product; the initial intent of the laws were to sever the interest of white Americans. The system of civil rights and case laws were only designed to give an appearance of equality to dismantle the fight for equality and relax the social conscious of social unrest (Bell,
Critical Race Theory helps us to understand that there is no real incentive for whites to eradicate racism; whites, both elite and working class are the beneficiaries of racism and racism was created for their benefit (Hirsh and Cha 2008; Brown, et.al. 2003; Bonilla-Silva, Eduardo, 2015).

Property over Justice

According to Derrick Bell whites comport themselves as valuable property. When there is a question of Blacks receiving justice over this valued properly, justice will lose (Bell, 1997). The economy impacts social justice. If the attainment of racial balance is expensive, and in limited supply, CRT explains why we see white receiving the lion's share. Blacks being thought to be subordinate to whites, are expected to see their limited share as racial progress, if they receive any of the supply of at all (Bell, 1997; Parker and Lynn, 2002; Brown et al 2003) White will only support equality for Blacks as long as they are not inconvenienced, it will benefit them and, their status wealth or position is not affected. If equality for Blacks means white Americans having less, justice will lose (Bell, 1997).

Critical Race Theory is a flashlight that reveals that America is not a color-blind society and race is a part of daily decisions that whites make about Blacks, especially in our judicial system. When Black Americans seek redress through the government system starting with the Equal Employment Opportunity Commission, for the 2% that end up before a jury each stage of the process is subjected to a racialized ideology that sets the standard of what constitutes racism.((Parker, and Lynn. 2002) . The process, by design is arduous and nearly impossible to succeed in (Bell, 1997; Hirsh and Cha 2008). The system of governance gives credence to the employer’s explanations of Blacks treatment.
in the workplace and therefore legitimizes the treatment that Blacks encounter (Brown et al.; Moore, 2014).

Using Critical Race Theory to examine the process and stages of the life of a workplace race discrimination case has aided in identifying White supremacist ideology, covert racist attitudes, behaviors, language that is embedded in the redress process and that is expressed in the judge's rulings (Bourne, 2001; Moore, 2014). Critical Race Theory is essential in honing our understanding of the role laws, power and position play against Blacks when traversing this process (Parker and Lynn, 2002). Power, equality, wealth, and justice are contentious issues in American society between Blacks and whites, in part due to each respective position on justice v. entitlement (Parker and Lynn, 2002; Bell, 2003).

In the case of EEOC v. Southern Co. the employer alleges that the Black employees seeking redress did not get promotions, raises or receive the same salaries as their white counterparts did. The defendant's justification for this inequality was that Blacks were not good employees, not as capable of the same quality of work as their white counterparts. Where this may be an acceptable answer in a bias redress process, Critical Race Theory would challenge this position and raise the question, if the employees were bad employee, how did they keep their job over the years? This question forcing a more critical analysis of why Blacks were denied their promotions raises, and equal salary. Critical Race Theory rejects traditions of liberalism and meritocracy. Legal discourse states the law is neutral and colorblind however, CRT challenges this legal “truth” and allows the reader to understand the evidence presented and issues discussed regarding inequality, racist attitudes, acts, and judicial decisions from a deeper
METHODS

In 2000, The Equal Opportunity Employment Commission (EEOC) filed a racial discrimination lawsuit on behalf of the Black employees at Georgia Power Company, alleging that they were denied promotions equal pay for the same jobs as white employees, received harsher discipline, and were denied promotions. Georgia Power Co. had 26 different locations throughout the state. These allegations that the Black employees filed with EEOC against the company came from 26 different locations. The statistics that were ascertained from the company in the EEOC’s investigation supported the Black employee’s allegations.

The EEOC then filed to have the cases to be heard as a class action lawsuit. A class action is a lawsuit in which the court authorizes a single person or agency (EEOC) to represent a larger group or class. The group or class must have several persons in the class with a common legal issue that they are charging. This was a very powerful legal strategy because it would dispel the notion that the treatment that the Black employees alleged they encountered at the Georgia Power Co. was based on isolated incidences of a few rogue supervisors. It would show that Georgia Power systematically engaged in unlawful discriminatory practices that created advantages for their white employees (raises, promotions, mentoring, and pay) that were denied to the Black employees. Unifying the claim was also powerful in that it would have allowed the EEOC to sharpen the focus on the policies and practices that enabled managers with the power to discriminate against Black employees due to their race.

Lee Anne Bell aids in our understanding of the national negative narrative shapes
views of Black Americans by both white managers and judges. These narratives whether true or not, frame how groups in society are evaluated, accepted, or rejected (Bourdieu, 1999; Bell, 2003). Bell argues that stories are more than one person’s negative thoughts about a particular group. Negative stories about Blacks become part of white culture, white ideology, and part of white America’s historical and social discourse (Bell, 2003). When negative attributes, such as “Blacks do not want to work and just want a hand out and not a hand up,” are accepted as truth and are reverberated throughout white discourse it justifies white's position of privilege, power and, supremacy (Bell, 2003).

Understanding the power these narratives bring to the process for Blacks who are seeking redress is important. These narratives have infiltrated the system of justice and help to frame judges’ understanding of the facts of the case. These negative narratives give more credence to the employer’s explanation of their behavior than supports the notion that racism exists. Critical Race Theory reveals these narratives are used as justification of perpetual racial inequality.

As a Black Critical Race Theorist, I have used a critical discourse analysis to examine a workplace race discrimination case. I used a Critical Race Theory perspective to interpret the appellate court’s ruling on the case where Black Americans were denied their basic rights of equality in the workplace. As such, my work is that of a critically engaged Black scholar who interprets how White supremacist ideology and colorblindness shapes the judicial process.

Critical Race Theory and critical discourse analysis reveals that language is a social practice that functions within culture, social and psychological frameworks (Horvath, 2008). Critical discourse analysis examines the connections between textual
structures and their meaning in communication within society. It examines critically how language creates and maintains differences in power and aids understanding of social problems such as power and discrimination through discourse.

Critical discourse analysis showed how credence is given to white managers by white judges regarding the testimony that was given about Black employees who have filed race discrimination charges against the employer. This credence seems innate from the judges and was automatically given to the white manager’s statement without substantiating that it was deserved. At points the judge actually identifies the manager’s statement as “honest” without knowing anything about the manager other than his white race.

**EEOC v. Georgia Power Co.**

To illuminate the narrative that Black Americans are denied justice when seeking redress for workplace racial discrimination, using critical discourse analysis in the *Cornelius COOPER, Michael Edwards, et al., Plaintiffs-Appellants, v. SOUTHERN COMPANY, Georgia Power Company, et al., Defendants-Appellees. No. 03-12230* cases has revealed the existence of White supremacist ideology and color blind epistemology that resides within the justice system and that clearly disadvantaged Black Americans who are seeking redress for workplace discrimination.

After reviewing over one hundred cases for my data selection, the *Cornelius COOPER, Michael Edwards, et al., Plaintiffs-Appellants, v. SOUTHERN COMPANY, Georgia Power Company, et al., Defendants-Appellees. No. 03-12230*, (referred to in the future as the Cooper case) case was chosen because the racism, insensitivity, oppression, marginalizing, inequality and injustice that Black employees encountered. When I first
heard about the issues, I was in total disbelief. Choosing this case meant that the
disbelief, if only within my own mind, was erased. More revealing were the judicial
practices that judges engaged in that not only prevented Blacks from obtaining justice but
the acts of the judges exposed colorblind epistemology while legitimizing white
supremacy ideological practices in the work place and in the court room through judicial
discretion.

This case was first heard by judge Orinda Dale Evens from the Georgia’s Northern
District court. This court’s transcript was analyzed as the initial backdrop for the case.
The case was appealed by the plaintiffs and then heard by three different appellate court
judges. The appellate court transcripts were critically analyzed as presented below.

I utilized Kohler Reissman method of stanzas to shape my discursive analysis. The
stanza can be read as a form of poetry; multiple layers of meaning that are not explicit
have to be unearthed to represent the narrative of white supremacy in the language of
courts’ decisions. This method was used to reveal the underlying meaning that the poetic
style of stanza delivers meaning that is missed when the data is read without the poetic
lens. By selecting particular language within the content of this court case and the use of
judicial discretion the story of this case is powerfully persuasive.

As Teun Van Dijk (1984) asserts, “[b]oth prejudice and talk are social phenomena
that require analysis within an interdisciplinary framework.” Because the court’s
response illustrates both prejudice and “talk,” what they did was silence the Black voice,
and to expose the silencing of voice, a close, contextual analysis of the language is
necessary.

To future illustrate this point, in a section of the data, a judge makes a value
judgement about a white manager’s testimony given about a Black employee. He refers to the manager’s testimony as an honest assessment of the Black employee, which implies the opposing testimony given by the Black employee was dishonest, in essence calling the Black man a liar.

Kohler Reissman’s method of stanzas method hones in on the fact that the judge gives credence to a white man that he does not know and has never seen before and suggests there is a bond that exists in the whiteness that is shared between the white manager giving testimony and the judge. This bond allows a judge to first see him as white, with all of “good qualities” that inhabit white beings. The stanza method allowed me to critical analyze the wording structure through a critical race theory lens. The text is tied to and is expressive of my codes. By selecting particular language within the content of this court case, and the prominent display of judicial discretion, the story of this case is powerfully persuasive.

“Unlike the thematic approach, language is treated seriously—an object for close investigation—over and beyond its reverential content” (Reissman, 2003). This approach is in direct alignment with critical race theory and it's unearthing of that discourse in the normal functioning of the court. The stanzas allow the identification of concepts through open coding. I will show those broad open codes and their application throughout the text. These are vital to abstracting codes to larger themes that can be examined for their connections--axial coding. Here is where the narrative of White supremacist ideology and colorblind epistemology is manifested. It reveals how the application of colorblindness in the hands of judges, creates a path for injustice. The data will also reveal how judicial language render White Supremacist ideology visible, though to be invisible while it
prevents Black redress in cases of racial discrimination. I construct a story of white supremacy using the court's putative neutral color-blind discourse in rendering its decision(s) and showing that it is anything but that. Through this journey I will identify the racialized injuries that the Black employees suffered, the employer’s justifications, and the court’s rulings on those issues that are reflective of white supremacy.

I have chosen a critical discourse analysis because it is the best way to reveal the existence of racism in judicial discretion. Critical discourse analysis helps in our understanding that language can be used as a social practice that functions within cultural, social and psychological frameworks. Critical discourse analysis examines the connections between textual structures and their meaning in communication within society. It examines critically how language creates and maintains differences in power relations. Using critical discourse analysis in the COOPER case, will reveal the existence of White supremacist ideology and color blind epistemology that resides within the justice system that clearly disadvantaged Black Americans who are seeking redress for workplace discrimination.

The data was retrieved from the United State District Court of Georgia Records through pacer court documents search engine that provided me access to the transcripts of cases that I analyzed. Using the lens of Critical Race Theory, I began my coding of the transcript. I critically analyze the case’s transcript examining all of the judge’s interactions with the plaintiff, (employee) the defendant (employer), the evidence and the witnesses from both sides. I then examine the phrasing, word choices and requested motions to identify both what is being said and the ideas being supported by the text.

The first examination of the content was pre-coding. I highlighted, color coded,
underlined and circled phrases, words, or quotes that I found unusual or interesting, important, and anything that grabbed my attention. As I begin analysis of the data, each theme that emerges was given a brief description. During the second session of coding, I examined the content and application of the judge’s decision, looking for repetitive language, and themes that emerged from the critical analysis. I then used these findings to categorize them into themes that represent the overarching message of the judicial decisions. I noted the repetitiveness of phases and words by counting the number of times a particular code was repeated to measure only the frequency and not necessarily the importance of what that theme represented.

Through a critical discourse analysis, I examined the judges’ standard of consistency with the acceptance of evidence from both sides. The analysis revealed a biased bend in favor of the white employer against the Black plaintiffs. There was a double standard on what was considered to be credible evidence. Anecdotal evidence presented from the defendant (the employer) to the judges was accepted as fact. When the same type of evidence was presented by the plaintiffs it was ruled to be “insufficient evidence”.

This critical discourse analysis has revealed that the judge used judicial discretion to dismiss evidence of the plaintiff (employee) that would support their case, while accepting evidence from the defense (employer) that helps support a defense. It also supports the notion that the judge showed favorable partiality to the employer, making rulings that weakened some and delegitimized other evidence that was crucial for the employee’s ability to create a prima facie.

Using a critical race theory lens explains the structured choice of language used by
the judges that legitimized racialized acts against the Black employees at the Southern Co. The rulings disempowered Black employees and were riddled with judicial code words, phrases and language that are reflective of racist narratives, identifiable bias and the presence of White supremacist ideology. Critical discourse analysis and critical race theory together frame this analysis of the data to address the research question: What are the discursive practices judges use to deny Blacks redress for workplace race discrimination?

The presiding district court judge, Ordina Evans, in this case denied the request for the case to be heard as a class action case. The Plaintiff (Black employees) filed to have the case heard as a class action to show that the race discrimination was systemic for all of the 2,400 Blacks who were employed by Southern Company and its subsidiaries. The certification request was rejected by the United States District Court N.D. and was being heard by the United States Court of Appeals. This certification is powerful due to its potential for dismissing the notion that race discrimination only exists in isolated incidences. This decision disempowered the Black employees’ ability to have a collective voice. The roar of the united voice of the group, arguing that racial discrimination under the Southern Co. was systemic, was reduced to a whisper. This certification can only be granted by a judge.

This judicial act forced each employee’s claims to be heard as individual claims which significantly weakened the credibility of the case, and minimized the employee’s ability to show a system of racial intent. The judge was able to look at the charges as isolated incidences, which allowed the employer to explain the racial acts as isolated incidents.
Additionally, the EEOC charged Georgia Power with creating hostile work environments for their Black employees based on the tolerance of nooses hanging in the workplace. Black employees in several locations were forced to work in environments where whites had placed hanging nooses in their work area.

THE FINDINGS

This thesis sought to answer the question: What are the judicial discursive practices that deny Blacks redress for workplace race discrimination? The data from the *Cornelius COOPER, Michael Edwards, et al., Plaintiffs-Appellants, v. SOUTHERN COMPANY, Georgia Power Company, et al.*, (Cooper case) reveals that both White supremacist ideology and colorblind epistemology is present in the judge’s rulings and helps to expose and to explain the judicial discursive practices that deny Blacks redress for workplace discrimination.

Using a Foucauldian perspective of discursive practices and critical discourse analysis, this case reveals the power relationship that judges have in a society and the ability to impact the lives of those seeking justice. Judicial power is expressed through judicial discretion, is the voice of god in courtroom, which both empowers whites and disempowers Blacks. The minority voice has power when that voice removes the structure forced upon the minority voice by the dominant culture, in this case, critically examining a judge who silences the Black voice. Through judicial discretionary rulings, the white voice is empowered to deny the existence of racism, and the Black voice is disempowered because Blacks lack the ability to express the reality of racism that they live with each day. The Cooper et al case reveals the judicial discursive practices that deny Blacks redress for workplace discrimination as follows:

---

1 Only one judge writes the opinion of the court, the other judges who sit the bench agree with the majority opinion. Although I note only one judge, I use the plural “they” to note the silent judges.
• silencing the Black voice
• using the power of judicial discretion/ language
• renders evidence as insufficient
• white supremacist ideology/ validates racist behavior
• valorization of whites/ empowerment of the white voice
• colorblind epistemology/ denies the existence of racism
• denial of historical significance of a noose

**Silencing the Collective Black Voice**

The act of Black employees seeking to file a class action lawsuit is immensely powerful because the Black voice can force white judges to see the issue, and the magnitude, that racism exists. A class action lawsuit takes the focus off of individual, isolated instances of racism and places the focus on a structural system of racism in the company that infects all members of the Black community at the Southern Co. In order for the case to be heard as a class action lawsuit, all the members of the suit must have common issues known as **commonality**. Within the U.S. Justice system, denying the plaintiffs the right to have a case heard as a class action lawsuit also denies Blacks a united voice. Denial of Black voices is powerful and has the ability to dismiss the notion that race discrimination is systemic: if racism exists, racism only exists in isolated incidences.

The judge’s denial of class action is also powerful in their ability to hide white racism and disparate treatment of the Black employees on such a large scale in the workplace after the Civil Rights Act of 1964. The judges, both the district court and the
Court of Appeals, who were reexamining the decision of Judge Orinda Dale Evans, rule that the Black employees did not share the common issues that unified the Black voice.

One judicial practice that denies Blacks seeking redress for workplace discrimination is to deny the power of a united Black voice. The judge denies Black plaintiffs the platform to present their evidence of systemic racial disparity at the Southern Co. as a united class, based on the judge’s definition of commonality: discriminating practices of intentional harm when a facially neutral (on the surface, not racist policy) creates a disadvantage. When the plaintiffs’ claims of race discrimination is presented first to Judge Orinda Dale Evans, and later to the judges who sit on the Court of Appeals, the plaintiffs file to have the case heard as a class action suit expressing commonality that represents the voices of all 2400 Black employees of the Southern Co. and their subsidiaries.

Federal Rule 23 (a) (b) states that for class action suits to be certified, all the injuries or claims must be similar, not exact. Racism is never exact, as the perpetrators of racism and the perpetrated are never the same. The similarity of racist acts can be seen in the diverse complaints of the plaintiffs, which illustrate similar racist practices, not exact racist practices. Commonality exists in the white structure, not in the acts themselves. Through commonality, the judges’ decisions to dismiss the case for not qualifying cause’s denial of the Black voice and common history of the racism perpetrated against Blacks.

Two-thousand, four hundred Black employees were subjected to the same corporate racialized policies, practices, management team, pay disparities, and hostile work environments under parent company Southern Co. The judge recognizes that a
singular human resource division overlooks all subsidy companies. Commonality becomes proven by the white, corporate structure, a commonality that is denied on the part of the judge. According to FED Rule 23(a) (b), as interpreted by the judge through the use of judicial discretion, Black employees did have the right to have a unified voice to state their claim of racism in the workplace. The judge is able to use denial, through the accepted judicial strategy of judicial discretion, against the seven remaining voices and invalidate their racialized experiences, creating a space for the white voice to be heard on a platform for white managers to give pretexts for actions that creates a disparate impact on their Black workforce.

**The Power of “We”**

In their ruling, the judge uses the Royal “We,” such as when Queen Elizabeth states “we are not amused,” when formulating their responses. The Royal “We,” when used in passing judgment, harkens back to a time when the royal family, specifically the king, was allowed power through the will of God, Rule by Divine Right. The judge’s “We” is not simply one judge speaking, not only one judge speaking for all the judges sitting the bench, but one judge speaking with the authority of a higher figure, God.

The Royal “We” is a judicial discursive practice that denies Blacks redress for workplace race discrimination that dismisses and puts power behind the unified voice of Blacks to deny the existence of commonality.

Additionally, the judges use the Royal "We" to give themselves commonality, a singular voice that stands united against a dispersed, Black voice. “We,” as a white voice, incorporates all white voices, the judges and the Southern company, and allows the cover of racialized practice to continue unexamined; the union between the judges and
the Southern Co., the “We,” works to silence the Black voice. A single person cannot
speak, and be heard, against a united chorus.

The use of the Royal "We" voice, “We turn, then, to whether the court’s
substantive determinations at the class certification state amounted to an abuse of
discretion,” assesses itself, not one judge assessing another judge. “We” supports itself,
even as “we” tries to be critical. Although meant to be critical of the self, with the use of
the term “substantive determinations,” critical thought of the self fails. “We” have
thought on this, and therefore, just because “we” thought, a lot (but not necessarily
critically), “our” decisions stand.

The judges use the rhetoric of commonality to deny the class action suit, silence
the Black voice, and empower the white voice. This practice gives a platform for the
white voice to deny the existence of racism in the workplace. The judges also use judicial
language to cite a federal law as justification to deny the request for a class action suit.
When the FED Rule 23(a) (b) is analyzed, this law clarifies that the Black employees
should have been granted commonality; the Black employees did have standing. The
judges rule that “Commonality of the broad class the plaintiff sought to certify would
have to be established by showing that the discrimination sustained was either part of an
overarching pattern and practices of intentional discrimination on the part of the
defendant's (employer) or the results of the discriminatory disparate impact of a facially
neutral employment policy. To establish a ‘pattern or practice’ of disparate treatment, the
plaintiff must show that intentional discrimination.
Double Standard of Evidence

Throughout this case, one of the most significant and repetitive judicial discursive practices is the judge using their power to reject testimony, evidence, and the voice of the victims, the Black employees at the Southern Co. This judicial practice of rejecting substantial, valid evidence disempowers the Blacks employees’ ability to expose the reality of racism in the workplace and reveals that racial oppression in spite of the Civil Rights Act, is still very real and prevalent.

The judicial practice of denial of clear evidence conceals, protects, and validates racialized practices as valid. The Black employees’ experiences are concealed through denial and invalidated. Denial also validates the culture of inequality that the employer has created. This culture secures Blacks to a subrogated position because the evidence before the judges presented by the Black employees shows that they often perform at accelerated rates, are some of the highest educated of the Southern Co.’s workforce, and yet are among the lowest paid for the same work that is done by their white counterparts.

Although the Black employees, also referred to as the plaintiffs, have presented direct evidence and independent statistical analysis that supports their claim on each of the issues before the court, both the judge in the district court and the Appellate Court judge rejected evidence as being insufficient to support a claim. These judges’ rejection and denial of the plaintiff’s evidence disempowers the Black employees and denies Blacks their right to have access to justice. Rejection of evidence delegitimizes their experience of racism as nonexistent while rejection justifies and validates their employer's treatment of them.
Throughout the data from the Cooper case, what becomes evident regarding the evidence is a practice of validating policies and practices that oppress, marginalize, and have disparate impact on the Black employees. This case has revealed a judicial practice of declaring that evidence presented by the white employer is good evidence, and evidence presented by the Black employees is bad evidence. The judge invalidates sound and valid proof that substantiates the Black position. The judge does not interrogate or challenge the evidence presented by the white defendants, but accept that evidence as the word of truth. This judicial discursive practice is not only present in this case, but is a thread that has existed in the justice system for Blacks in America since its establishment.

When all seven of the plaintiffs presented direct statistical evidence from an independent expert witness that supported their claim of systemic racialized policies and practices that created disproportionately disparate impact on Black employees in advancement, opportunities, access and pay, the judges ruled the evidence insufficient and flawed.

- “With respect to the Plaintiffs’ statistical evidence, for instance, the court concluded that while the “methodologies” of plaintiffs’ expert may be valid, the analysis has some limitations which undermine its usefulness in measuring whether Southern Co.’s employment practices are racially neutral.”
- “The court however rejects its finding as unuseful.”

Additionally, when the judge was presented with the evidence that the Southern Co. engaged in racialized pay disparity, disavowing the value of both the experience and the education of a Black employee, Harris, by setting her salary 20% lower than her two
white colleagues, Golden with a bachelor's degree and six months experience and Mr. Page with only intern experience and a master's degree, the courts ruled:

- “Southern Co. offered legitimate, non-discriminatory explanations for the pay disparities between P. Harris and her white colleagues.”
- “P. Harris did not have either the professional experience or formal education of Page, and Golden, could not therefore perform her job as efficiently or independently, and was thus less valuable to the department.”
- The district court did judge that “P. Harris had failed to rebut these reasons and had not established that the proffered reasons were pretext.”

This practice is shown again when Cooper’s evidence that supports his claim of being the most qualified candidate:

- “Further we are unpersuaded by Cooper’s assessment of himself or his credential”
- “Cooper has not shown that Clay (GPC) proffered, legitimate reasons for denying him an interview were unworthy of credence”

Colorblind Epistemology: Denying Racism

Another very powerful judicial discursive practice that denies Blacks redress for workplace discrimination is the judges’ practice of denying that racism exists in the workplace because of a colorblind epistemology. A judge’s colorblind epistemology has shown to be the greatest obstacle that Black Americans face in trying to receive redress in the judicial system. Colorblind epistemology legitimizes white supremacist ideological practices in the workplace by looking at workplace policies and practices that overwhelming have a negative impact on a Black employee, and judges refuse to critically examine that negative impact.
The Cooper case reveals this practice frequently when the judge makes a ruling on the facts before them. When the judge applies a color blind epistemology to the request to have the case heard as a class action suit, the judge denies that systemic racism exists. This ruling took place after the judges heard the testimony from the defendants who said that “it is the company’s practice and policy to empower all managers to set the salary and promotions for their staff by using their ‘gut feelings’ about them.” Could this gut feeling be based on a long standing white supremacist cultural southern view of Black Americans being inferior to whites; thus giving justification to setting salaries for Blacks lower than whites for the same work performed? The judge’s acceptance of Black employees’ salaries and advancements being subjected to the gut feelings of their white managers as a valid practice in the company is judicial racism that perpetuates racial inequality. This reveals that the judge’s ideology in ruling in the Cooper case was flawed and racially unjust.

Because gut feelings of white managers are used in determining the salary and promotions of staff, all Black employees become subject to racialized notions that frame the practices, climate, and policies by the Southern Co. The judge rules that if racism existed at all, the experiences would be so different that each of the experiences could not be represented fairly by one united voice. This judicial ruling gives an impression of doing what is in the best interest of the community of Black employees at large, when the actual impact of this ruling is the disempowerment of all of the Black employees. This judicial practice is called a false positive because the ruling supposes “best interest” while the effect of the ruling is anything but in the best interest of the community. This practice is very powerful in its allusion of being fair. However a critical examination of
this ruling reveals that it serves two purposes: detracting attention from the impact of the ruling while denying the Black employees redress and justice.

Upon further examination of the judge’s rulings, what becomes more visible is the judge’s ability to create a legitimate voice and empowerment for the defendants' (white managers) acts of oppression and marginalization of the Black work force. In these findings, the judge accepts as valid the right of an employer to empower white manager's who have Black employees in the south to set their salary, access, advancement, and opportunity, not by the Black employees’ education, experience, work ethic or work history, but by a “gut feeling” on part of the white managers. There is something inherently problematic with judges sanctioning this practice as legitimate. This practice of legitimizing racial disparity by the judge itself perpetuates racial inequality. This judicial practice gives an illusion of a higher power knowing what is best for all as a god like or royal figure who wants to secure justice for all.

Denial of racism on part of the judge is shown again when analyzing the Cooper case’s claim of race discrimination. Cooper applied for a promotion in which he was determined by the company’s records to be the most qualified employee (a claim that was substantiated by the courts documents that were subpoenaed from the Southern Co.) who applied for a promotion, but was denied even an interview by Clay (a white manager). The powerful impact of colorblind ideology as a judicial discursive practice that denies Black redress for workplace race discrimination is clear when the judge examines Clay’s actions without ever challenging his decisions or motives: Clay sets his own criteria for the process that legitimizes his ability to create obstacles for Black employees while creating access, empowerment, promotions, and positions for whites. The judge’s rule:
• “We are unpersuaded that Clay’s use of applicant’s recommendations as one factor-among other, clearly job-related factors-in determining that would be interviews was a pretext for a secretive, subjective and discriminatory practice”

The judge never questions why Clay chooses not to grant an interview to any Black employees, supporting the racist ideology that whites are automatically superior, even when those white people do not have the experience: “Blacks need not apply.” Although the successful candidate did not have the foreman experience that Cooper had, the judge never questions the pretext of Clay’s requirement for the applicants to have foreman experience in order to get an interview. Nor does the judge consider that Clay’s requirement of having a letter of recommendation, as being nothing more than an obstacle that Clay created to deny Blacks access to career advancement and opportunity, was in itself racist. If all the managers are white, getting an interview becomes dependent upon a white voice, not experience or education because then the interview process becomes dependent upon that white voice; a black person can only become acceptable when validated by a white person: “he’s one of us.” If this was an essential requirement, why was this requirement not posted on the JobNet site when the original posting announced the position? Mr. Clay had in his possession a computer-generated list of applicants' qualifications, work history and education. This list was not based on skin color, so why would he need another manager's opinion of the applicant?

**White Supremacist Ideology/Validates Racist Behavior**

Another judicial discursive practice that denies Blacks redress for race discrimination is the judge’s framing of facts through a white supremacist ideological lens that ignores and even validates racist behavior. Denial of facts becomes evident
when we critically examine how both the district court judge and the appellate court judge upheld Clay's, a white hiring manager's, decision to deny Cooper access to an interview in which Cooper is the most qualified candidate. Clay creates pretexts to exclude Black employees from the promotion such as: requiring Black applicants to have two years of experience in power delivery, demonstrated communication, leadership and teamwork skills, and experience as a foreman, which, when the chosen white candidate's credentials were examined, he did not possess any of the requirements for the job that Clay stated was essential for Black employees to have in order to get an interview.

Cooper’s qualifications are based on Cooper's employment records that were before the courts. More telling is that Clay gave the promotion to a white employee who was less qualified than Cooper and had no foreman experience. The pretexts deny a qualified Black employee access to advancement and greater income while providing privilege and opportunity to a white employee. The judge sees no injustice in Clay’s action.

**Valorizing the White Voice**

Yet another judicial discursive practice that denies Blacks redress for workplace discrimination is seen in the judge valorizing the white voice. In direct testimony, Cooper challenges Howard with documents supporting his claim that Cooper was in fact the most qualified candidate for the position. The white male, who Howard had chosen for the promotion, had far less education and experience than Cooper.

The judge accepts Howard’s testimony that he did not select Cooper because he believed that “Cooper did not possess superior communication skills, job knowledge, experience, teamwork skills and peer credibility.” Howard also states he learned from
another white member of the screening committee that Cooper experienced difficulty articulating training instructions to student employees when he served as a guest instructor at the Training Center.

The judge ignores Cooper’s counterpoints of Howard’s testimony, where evidence of his work history shows he did have both the experience and job knowledge to be a successful candidate. In Howard’s testimony, he was not able to establish what constituted “superior communication skills, or what differentiated a bad communicator from a superior one,” although the evidence does not support this assertion. The assessment seems to be completely subjective to Clay’s filter, "his gut feelings."

Having the evidence before them, the judge delegitimizes Cooper’s evidence and gives a platform for Howard to denigrate Cooper’s testimony and his credentials. The judge also validates Howard’s testimony as valid even though he could not substantiate it, but evidence spoke against it.

The judge’s ruling:

- “We the court will not second-guess Howard’s [a white manager] honest assessment of Cooper’s [a Black employee] qualifications.
- “Federal courts do not sit as super-personnel departments that reexamine an entity’s business decisions. Rather, our inquiry is limited to whether the employer gave an honest explanation of its behavior.”
- “We are unpersuaded that Howard's testimony is dishonest”

Denial of Historical, Racial Trepidation Power of the Noose

The data in the Cooper case is very profound and persuasive, revealing the power that exists in the hands of a judge. This case exposes a variety of judicial discursive
practices that deny Blacks justice when seeking redress for workplace discrimination, but none more revealing than their ruling on whites hanging nooses over the desks and in the work area of Black employees. We have seen the very same judge, who has been empowered to stand in the gateway of justice, deny Blacks the same justice that judges are sworn to procure. The Cooper case has shown how a Judge was able to silence a unified, voice of 2493 Black employees and deny them the ability to have the case heard as a class action. Judicial power was used to take the roar of 2400 Black employees seeking justice and reduce to a whisper of only seven plaintiffs. The judge use the power of judicial discretion to impose the royal “we” voice to declare the position of authority and the rulings unchallengeable declaring what was known to be morally wrong, using the “royal we” declaring it legally right by the power of judicial discretion.

Examining this case reveals practices of judges that delegitimize Black evidence as insufficient, implying that Black plaintiffs are unable to build a case through testimony and evidence that would command justice and redress. The cooper case has exposed judicial language that validated policies that create disparate impact on the Black community of workers at the Southern Co. This court has also heard testimony from a white manager who’s justification for paying his white staff a substantially higher salary than the Black employee with a higher degree and six years more experience, because Plunkett says "the white employees brought him more value.” As racist and outlandish as one would think this testimony is, the judges' ruling in this case supported Plunkett’s pay disparity as a legitimate business decision.

Here we see another judicial discursive practice that denies Blacks redress for workplace race discrimination. This ruling supports that Blacks are inferior in their
abilities when valued next to whites. This is a racist discourse that harkens back to the first moments of enslavement of Blacks at the hands of white oppressors. We have also seen the judge in this case validate racist behavior when white managers are empowered to set salaries and career opportunities for Black employees based on a "gut feeling."

This case captures a judge saying that the testimony of a white male defendant was “honest” and free from deceit when he describes the most qualified Black candidate applying for a position as unqualified. The judge’s valorization of the white defendant totally denigrates the Black man to whom he refers. This case exposes more than just injustice on the part of the judges, but behavior that would be viewed by some as racist and contemptible, but the judges in the Cooper case did not stop there.

The judge’s ruling denying that there is a nexus of hanging nooses above a Black employee's desk, and racism or that it creates a hostile working environment, goes beyond being morally decrepit and consciously corrupt. This ruling is simply a blatant disregard for the law and clearly violates law.

This ruling creates injustice by not finding this both offensive and illegal and a disregard for written law outlined in the Civil Right Act of 1964. According to Title VII law, “race discrimination involves treating someone (employee) unfavorably because he/she is of a certain race. The law forbids discrimination when it comes to any aspect of employment. It is unlawful to harass a person because of that person's race or color. Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols.”

(https://www.eeoc.gov)
If the previous judicial practices are not egregious enough, one more act on part of the judges can only be labeled as vile and despicable, denying the historical, racial significance of the nexus between Blacks and a noose in the South, where a noose exists as a sign of trepidation, submission, and death of the Black body when in white hands. Here, we see the judge’s lack of ability to hide the ideological bond they share with white managers in denying the power of the presence of a noose in the workplace. It is hard to imagine that a team of judges in the Cooper case has direct evidence and sworn depositions from the defendants, the other white people that several managers, including Clay, forced Blacks to work where nooses are hanging.

Whites lynched over 15,000 Black Americans, where the majority was from nooses. The noose has both a historical and physiological significance for Blacks and whites alike. Whites have used the noose to murder Black men, women, and children. A noose creates a feeling of trepidation, oppression for Blacks, and is used to keep Blacks silent and subjected to white dominance through the proven threat of death. This noose is more than just a symbol of submission, hatred and death; it is a symbol of power for whites. It is that place where whites have stood in the place, in God like authority and was empowered to take life. The noose symbolizes whites’ authority over Blacks while acknowledging whites feelings of superiority because they are the holder of the noose. The justice system in the Cooper case failed to acknowledge the racial significance of these historical facts or condemn these acts and those symbols that are symbolic of those acts as both immoral and illegal.

In the transcripts, the judge’s restatement of the facts state the judges acknowledge that “among the evidence presented to them were reports of several ugly
incidents involving nooses displayed at some locations within some of the defendant’s facilities, reports of racial jokes and slurs, and the belief expressed by various employees that there was a ‘glass ceiling’ for African-Americans employees.” Yet in the face of all of this, the district judge determines that:

- “the anecdotal evidence the noose is ‘inadequate to establish a pattern and practice of racism or discrimination.’”
- “the court of appeals’ judge supports the district court judge to rule ”again, we conclude that the district court acted within its discretion,”
- the anecdotal evidence-disturbing as some of it may have been-was inadequate to establish racism or discrimination .”

Here again we see the judicial discursive practices that deny Black redress for workplace race discrimination not only by denying the historical significance of the noose, but to deny that today that significant history remains a reality for Blacks in America. When they ruled that the white managers did nothing wrong by ruling that a noose at best would be considered by some to be offensive, and that placing nooses over the desks of Black employees is not an act of oppression; this was unconscionable. To rule further that there was no nexus between Clay a white hiring manager who hung some of the nooses and who denied Cooper (the most qualified employee for career advancement) is a clear violation of these judges' fiduciary responsibility and to be comatose in the area of morality.

A Foucauldian examination removes social structures based on power in order that the minority voice can be heard. In this examination of the Cooper case, I have exposed how discursive judicial practices silence the Black voice by using the power of
judicial discretion and language, determining evidence as insufficient, white supremacist ideology that validates racist behavior, valorization of whites that leads to empowerment of the white voice, a colorblind epistemology that denies the existence of racism, and denial of historical, racial history in the United States. Judicial discretion and language disempowers Blacks who seek justice. When a judge determines evidence as insufficient, he or she denies the existence of facts that speak toward systemic racist practices. Due to white supremacist ideology that validates racist behavior, issues of enslavement continue to haunt society. A colorblind epistemology denies the existence of racism, and in the denial, denies justice when racism occurs. A denial of the historical, racial history in the United States forces Blacks to continually view life through the opening of a noose.

DISCUSSION

White supremacist ideology, color blind epistemology, and subjectivity, are all powerful tools in the hands of unfettered authorities like managers and judges. Using a Critical Race Theory lens while critically examining this case and the issues brought before the district and appellate court has shown that there was bias in the ruling in this case. Before the courts, seven Black, American employees ask the courts to recognize the hostile racial environment to which all 2,400 employees were subjected. Their request came in filing a lawsuit asking to be certified as a class action. Class certification is powerful in its assertion that race discrimination at the Southern Co. and its subsidiary were systemic and not just isolated incidences. Additionally, the employees sought justice for Black American employees who were denied promotions, equal pay, and access to upward mobility, and wrongful terminations. The entire request for justice was denied by the United State District Court, N.D Georgia Atlanta Division and the court of
Critical Race Theory reminds us that racism is ubiquitous and is considered normal in the lives of Blacks in Americans. However, there are illusions that the justice system has been inoculated against White supremacist ideology and colorblind epistemology. The data has revealed quite the opposite. Through an analysis of the facts, rulings and final judgments, this thesis has concluded that racism is present and impacts the judges’ decisions when ruling in race discrimination cases.

Examining the role of racism and colorblind epistemology in the ruling of Harris, we find the courts were unwilling to acknowledge that racism was the reason why Plunkett created a wage disparity between Ms. Harris and her two white colleagues. Harris had more experience and a master’s degree, yet when Mr. Plunkett set the salaries; Harris was valued less than a white woman with a bachelor’s and a white male with a master’s and only six months as an intern. When Harris challenged Plunkett’s pretext that was hiding a racialized agenda, the judges refused to acknowledge it. The judge’s response itself was racist in supporting Plunkett’s reason for pay inequality: “On this record we cannot find any weaknesses, implausibility’s, inconsistencies, incoherencies, or contradictions in Plunkett’s [SCS's] proffered legitimate reasons, that a reasonable fact finder could find them unworthy of credence.”

When I critically analyze the judge's’ ruling on the existence of commonality between the seven named plaintiffs and the remaining Black employees not specifically name in the lawsuit I found that all the employees were united by common policies and practices. Both the district and the appellate courts applied an interpretation of FED Rule
23 (a) (b) that was not logical. If the law was read for intent and not subjected to judicial
discretion, the plaintiffs would have been granted a class action status. FED Rule 23 (a)
(b) states “Regarding the requirement for FED Rule 23(a) (b) while not entirely
dissimilar to the typicality requirement, FED Rule 23 (a)’s commonality requirements
measures the extent to which all member of a putative class have similar
claims.” Traditionally, commonality refers to the group of characteristics of the class as a
whole: “[t]ypicality refers to the individual characteristics of the named plaintiff in
relation to the class.” Under commonality requirement “neither the typicality nor the
commonality requirement “mandates that all putative class members share identical
claims. Factual differences among the claims of the putative class members do not defeat
certification” (Baby Neal v. Casey, 43 F. 3d 48, 56 (3d Cir. 1994).

Commonality did exist between the plaintiffs, and was visible in the examination
of the case; however this case was subjected to the judges’ white supremacist ideological
lens and subscribed to colorblind epistemology that impeded the judges’ abilities to
analyze the case fairly and logically. Race discrimination case is subjected to judicial
discretion that is also unfettered and there is no standard line that can be identified and
would suggest that a judge has abused the power of judicial discretion. These conditions
in the courts that Black American are subjected to, reveals the abusive process that
precludes justice.

Judges’ languages and rulings reveal White supremacist ideology

When we examine the judge's’ response to Mr. Cooper, who was asking the
judges to fairly analyze the evidence that was put before them in the documents and
testimony from both the expert witness and the defendant themselves, the judges denied
Mr. Cooper’s request. Using the example of Mr. Cooper’s application for the trainer’s position, all the documents showed that Mr. Cooper was a viable candidate for promotion to trainer. He had both the experience and the training, yet another white employee with less qualification was selected by the manager.

According to the defendant’s policies and the EEO D managers could “use their gut” in making job selections. The “gut feeling” speaks to white logic that is steeped in white supremacy ideologies. White logic is the bedrock of white culture that has concealed racist dimensions of mainstream white Americans.

When Mr. Cooper raises the issues of pretext and asks the judges to examine Mr. Howard’s testimony the judge's response was “[s]hort of some evidence that Howard did not genuinely believe the legitimate reasons, on this bare record we will not second-guess Howard's honest assessment of Cooper's qualifications,” and that” “[f]ederal courts do not sit as a super-personnel department that reexamines an entity's business decision. Rather, our inquiry is limited to whether the employer gave an honest explanation of its behavior. We do not ask whether the employer selected the ‘most’ qualified candidate, but only whether it selected the candidate based on an unlawful motive.”

Blacks seeking redress for race discrimination in the workplace are forced to undergo a process that is hostile to them, and they are subjected to judges who have not been inoculated against racist ideology. As a Critical Race Theorist, I must question why the judges accredited Mr. Howard as being free of deceit and untruthfulness; sincere when he gave his justification for not selecting Mr. Cooper the most qualified candidate for the promotion. The judges had no knowledge of Mr. Howard personally, but made certain assumption about him. I would argue that two issues are emerging here,
colorblind epistemology and white supremacist ideology. Colorblind epistemology has proven to be extremely detrimental to Black Americans who are seeking justice in courts. This epistemology disavows the power that race place in the lives of Black Americans in the workplace experience. When Black Americans are not promoted, denied access to opportunities or receive equal pay for equal work, colorblind epistemology suggests that the disempowerment of Blacks is due to Black mediocrity.

The judge's ability to attribute honesty to someone they have no knowledge of just because he is a white male and part of the privileged class is racism coming from the bench. The judges reveal their white supremacist ideology in believing that a white man’s testimony is honest and has value without ever given it the scrutiny it should have undergone; there was no need, Mr. Howard was white. In selecting a lesser qualified white male, Mr. Howard protects white privilege, position, power and the judges support him in this endeavor.

There is a companion truth that the judges have shown that they also ascribe to Blacks: dishonest, inferior, and undeserving of equal pay, promotions and access. This example reveals the power and position of judges to express subjectivism which impedes Black access. The only truth is what the judges ascribe as truth. Truth is merely subjective, and that there is no external or objective truth when truth is subjected to judges who filter credible and direct evidence through a white supremacist ideological lens and deems facts insufficient. The judges’ acceptance of this ideology perpetuates oppression, marginalization, and inequality of Blacks in America.

**Judicial Discursive Practices Deny Blacks Redress**

The data analyzed in this case answers the question of “What are the discursive
practices judges use to deny Blacks redress in cases of race discrimination in the workplace?” The discursive strategies are practices of a racist ideology that refuses to acknowledge the presence of racism despite the direct evidence before them. Discursive practices silence the Black discourse of equality and justice. They are illogical rulings, not based on facts or reality, but steeped in White supremacist ideology that justifies denying Black Americans redress, believing that Blacks are undeserving. Judicial discursive practices are rulings that delegitimize Blacks Americans’ racialized workplaces experiences and disparities as nonexistent, evident in Judge Orinda Dale Evan’s rulings that stated “there is no nexus between whites hanging nooses in Blacks workplace and racism” despite the historical context of the noose.

The judges use linguistic maneuvers to support White supremacist ideology, which denies Blacks redress for work place discrimination. It is done through the structure of terms that has authoritative meaning in its framework. It is visible that the judges’ assessment of pay disparities between Black and white employees as a “business decision” that the courts were not prepared to challenge. They are revealed through the interpretation of laws that favors one position over another that are not legal. Judicial discursive practices used to deny Blacks redress for workplace race discrimination are revealed in the rejection of independent expert statistical analysis, facts of the case that shows workplace race discrimination was rampant at the Southern Co and its subsidiaries.

The discursive strategies are most prevalent in the power of judicial discretion that legitimizes these acts of oppression and denial of justice. Workplace race discrimination cases brought before judges by Black Americans are dismissed 90% of the
time, even before the case evidence is fairly assessed; citing that there is was not enough
evidence to conclude that racism existed in the workplace experience: Judge Orinda Dale
Evans ruled that a white manager’s forcing Black employees to work with nooses in their
work space was not conclusive to establishing a hostile work environment. The appellate
court judges concurred. As a Critical Race Theorist, I would have to ask the justices, is a
noose only racist when it is around a Black person neck?

The construction of words has powerful meaning in the context used in. As
previously stated, in the judges’ usage of attributing to someone they knew nothing
about, the honest character is based upon race. It is revealed and visible through the
interpretation of laws that favor one position over another that is not legally sound or
based, and is expressed through judicial discretion.

RECOMMENDATIONS

Now that it has been revealed that racism does exist in judicial ruling and White
supremacist ideology is the filter used to examine the case, where do we go from here?
Although the Constitution upon which our laws are based was originally written to
support land-owning, white males, through successive amendments, our Constitution has
become applicable to all. When people break the law they need to be held accountable,
and this includes judges. We have to reconstruct the justice system, just as we reconstruct
our Constitution through the use of amendments. We can begin with an independent
oversight commission made up of a diverse, minority population from legal professionals
and the surrounding communities. This commission would serve two purposes; one to be
a legitimate voice from the community while educating the community about their rights
and the new process. The second would be to invest in the community in creating jobs
and education for them. These positions would include training in both the law and the legal redress process that would empower them to raise issues of cases where justice had been previously denied.

The commission would be charged with the responsibility of investigating all race discrimination cases that have been decided. This commission would be a service paid for through taxes. This process must be easy to navigate. The commission would be responsible for educational outreach to ensure that employees and justices are aware that the commission is designed to seek justice for those who have been denied it as well as holding judges accountable for being an obstructionist to justice. If the commission concludes that an injustice has occurred, first, the judges must be recused from all racialized discrimination cases while they are educated in how to expose and understand the effects of internal white privilege and power. If a judge does not exhibit an understanding of the issues expressed during the training in his or her rulings, the judge would then be stripped from the bench and the bar notified, where their license can be suspended or the lawyer disbarred.

This may seem harsh but fair; a message has to be sent to the judicial element that stands in the gateway of justice, only to create injustice. Blacks in America have been the target of discrimination based on race, brutality, marginalization, racial oppression throughout life in America at every turn. They must be empowered to effect change and allow Blacks to be part of owning the solution that facilitates real justice. So when Black Americans turn to those who are the icons for justice and receive only injustice, judges, too must drink from the cup of hardship to ensure that Black Americans will be able to eat from the plate of plenty.
For future studies, it is first necessary to establish a very comprehensible definition of race discrimination. It is imperative for establishing justice when the violation occurs and affords plaintiffs the ability to put lawsuits in motion. I would like to also explore the impact of emotional, physical, and physiological effects that these racist rulings have on the plaintiffs over the lifetime of their families and society. These xenophobic rulings could also be rated for criminal charges for ease of bringing these judges to justice.
CONCLUSION

Although race is socially constructed, in America racism is an integral part of white culture and American’s governance; it is the bedrock of White supremacist ideology. White culture is often seen through the lens of white supremacy and is understood through language, negative narratives about Blacks, power, position, and wealth. It is white Americans’ worldview and colorblind epistemology, where shared assumptions about Blacks, justifies whites’ apex position of dominance power and wealth in society while denying the existence of racism.

This ideology rationalizes the tolerance of racial inequality, subjugation, and marginalization of Blacks in America. It advocates that racism does not exist; we refuse to see racism and therefore racism does not exist. (Bonilla-Silva, 2006; Omi and Winant, 1986). It suggests that Blacks’ lack of wealth, position, and power is due to mediocrity, placing the responsibility on Blacks and not on a system of injustice that preserves white racial advantage and privilege. This is in direct conflict with Critical Race Theory, whose core tenants are: racism is ubiquitous, part of everyday life for Blacks in America; racism is persistent, pervasive, is systemic in the law and is society.

White supremacist ideology is paramount in American culture. It is a racist ideology that, at its nucleus, believes that white people are superior to Blacks and should reign over them socially, politically, economically and in all aspects of life. It justifies white hegemonic dominance, power and wealth, secures white privilege, and whites will do all possible to protect it. The counter truth to this belief is that Blacks are mediocre, intellectually inferior to whites, deficient and are of a lesser value to society, and therefore should not have access to positions, power or wealth that whites have.
This thesis has sought to expose the presence of White supremacist ideology, colorblind epistemology and the powerful impact it has on the lives of Black Americans. White supremacy has also been presented as a strategy of governance that negatively impacts Blacks in the workplace and the justice system. What has been revealed is, in spite of the Civil Rights Act of 1964 and Title VII, Blacks in America are still denied the basic rights of equal pay, access of opportunity, fair treatment, and justice. Black Americans work in racial hostile environments where they are subjected to macro- and microaggressions, marginalization, and oppression that have created significant health issue for Blacks that their white counter-parts do not experience. In the workplace, Black Americans’ education, experience, or work ethic is undervalued, which justifies white managers and judges to legitimize the actions and impact of salary disparity.

This was revealed in the data of this case where Ms. Patricia Harris, a Black American employee who had both a bachelor and master degree, six years of experience in the field but yet was paid substantially lower that her two white colleagues, a white woman who had a bachelor degree and six months of experience and a white male who had a master’s degree and only intern experience. Yet the white manager stated in his legal deposition that the “white candidates brought more value to him than Ms. Harris.” Judges have not been inoculated against a subscription to White supremacist ideology and colorblind epistemology which denies Blacks justice when they come to the judicial system for justice and redress for workplace discrimination. Colorblind epistemology, as stated by the judges in their rulings in the *Cornelius COOPER, Michael Edwards, et al., Plaintiffs-Appellants, v. SOUTHERN COMPANY, Georgia Power Company, et al., Defendants-Appellees. No. 03- 12230 case*, exists but states that racism was not present
in any of the white managers’ decision that caused the name Black American plaintiffs’ disparate impact.

Under a critical analysis, judges state “we are unpersuaded by the evidence [presented by the Black employees]” and put the onus on the plaintiffs, suggesting that the plaintiffs were deficient in their evidentiary arguments and were asking for relief for something they were not entitled to. “We won’t second guest the ‘honest assessment’ of Mr. Howard” (a white manager). “We are unpersuaded that Mr. Howard's testimony is dishonest,” and Mr. Howard’s thoughts of Mr. Cooper as a Black employee was so inferior to other white candidates that he refused to allow him to have an interview for a promotion to which he was the most qualified candidate. These judges gave an automatic credence to this manager as being “honest” solely because he was white. A companion truth is that Blacks were discredited and deemed dishonest, based solely on their race.

When the Plaintiffs, (Black employees) challenged the white management’s (defendants) racialized employment decisions, the judges ruled it as a legitimate business decision: “[w]e won’t re-examine business decisions” of a legitimate company. They further stated that “[f]ederal courts do not sit as super-personnel departments that reexamine an entity’s business decisions. Rather, our inquiry is limited to whether the employer gave an honest explanation of its behavior.”

Since the testimonies of the white defendants were deemed honest, the Black employees who countered their argument become dishonest. In spite of all of the direct evidence that does not need an interpretation, but is valid on its face, independent expert witness, statistical data, testimony and having been charged by the federal government’s department, the Equal Employment Opportunity Commission (EEOC), the plaintiffs were
still denied justice by the judges in this case. The judges rule on all accounts that the white employer did nothing wrong. The judges and white managers were united in their assessment of privilege and entitlement of whites and on the belief that the Southern Co. and their subsidiaries did not violate Title VII, or any parts thereof.

These rulings leave Black Americans empty, without justice, and are representative of the hostility that Black Americans experience in the court rooms where discrimination is upheld, the board room where policies are created, and Blacks’ workspace where they are executed. This system unifies whites under a white supremacist ideology where whites get to play the race card that gives them authority, validation and justification for racialized policies, practices and oppression that forces Blacks to continue to see life as a Black Americans through the noose.

The courtroom is just a microcosmic example of a macrocosmic view. The contest for equality in not just in the courtroom, but also beyond the courtroom. The issues examined, and how white supremacist ideologies are enacted in the courtroom also appear, in the same ways, outside the courtroom, within the scope of the greater society. The struggle of Blacks is real, even as the courts and the society deny the struggle, and the struggle continues.
References


Discrimination.” *Cambridge; National Bureau of Economic Research.*


Nahar 76


Skaggs, Sheryl. 2009 “Legal-Political Pressure and African American Access to
