

BLACK AND WHITE ATTORNEYS' PERSPECTIVES ON RACE, THE LEGAL SYSTEM
AND CONTINUING LEGAL EDUCATION:
A CRITICAL RACE THEORY ANALYSIS

by

LORENZO BOWMAN

(Under the Direction of Thomas Valentine)

ABSTRACT

Statistics abound which document the racial inequities in the judicial system with regard to convictions and sentencing. Nevertheless, the legal profession in Georgia has not acknowledged the importance of race in jury decisions and judicial sentencing by mandating a racial awareness continuing legal education (CLE) requirement or by expanding one of the current requirements such as ethics to include the issue of race. Critical race theory (CRT) suggests that support for such race-related CLE would be based on the race of the attorney.

The purpose of this study was to determine Black and White attorneys' perspectives on race, the legal system, and their level of support for the inclusion of race-related topics in CLE. The qualitative study employed critical race theory as the theoretical framework. The study used a convenience sample of fourteen Black and ten White attorneys who practiced in the Athens and metropolitan Atlanta area. The data were collected through the use of in depth semi-structured face-to-face interviews. The resulting data was analyzed using the constant comparative method of data analysis and major themes were determined.

An analysis of the data from the White attorneys revealed four major themes:

(a) Racial inequality is pervasive in the legal system, (b) Race influences interaction between the judiciary and defendants, (c) Black attorneys are victims of race-based exclusion at all levels in the profession, and (d) Black attorneys must locate their practices near Black clientele and near a diverse judiciary. The White attorneys were supportive of both the status quo and limited change in the current CLE format. The White attorneys were reluctant to advocate a sweeping overhaul of the current CLE approach.

An analysis of the data from the Black attorneys revealed five major themes: (a) The judiciary, White attorneys, and jurors view Black attorneys as incompetent, (b) Black attorneys are victims of race-based exclusion at all levels in the profession, (c) Race influences interaction between the judiciary and defendants, (d) Black attorneys must locate their practices near Black clientele and near a diverse judiciary, and (e) Jurors consider race in their deliberations. The Black attorneys all agreed that CLE should address the issue of race and that the status quo was not acceptable. There was a strong sense of urgency among the Black attorneys about the nature of the race problem in the profession of law and the need for CLE to address the issue in its programming.

INDEX WORDS: Adult Education, Anti-Racist Education, Continuing Education, Continuing Legal Education, Continuing Professional Education, Critical Race Theory, Critical Legal Studies, Qualitative Research

BLACK AND WHITE ATTORNEYS' PERSPECTIVES ON RACE, THE LEGAL
SYSTEM, AND CONTINUING LEGAL EDUCATION:
A CRITICAL RACE THEORY ANALYSIS

by

LORENZO BOWMAN

B.S., Southern Polytechnic State University, 1984

M.S., Georgia State University, 1988

J.D., Georgia State University, 1993

A Dissertation Submitted to the Graduate Faculty of The University of Georgia in Partial
Fulfillment of the Requirements for the Degree

DOCTOR OF PHILOSOPHY

ATHENS, GEORGIA

2004

© 2004

Lorenzo Bowman

All Rights Reserved

BLACK AND WHITE ATTORNEYS' PERSPECTIVES ON RACE, THE LEGAL
SYSTEM, AND CONTINUING LEGAL EDUCATION:
A CRITICAL RACE THEORY ANALYSIS

by

LORENZO BOWMAN

Major Professor: Thomas Valentine

Committee: Ronald Cervero
Mary Frasier
Talmadge Guy
Robert Hill

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
May 2004

DEDICATION

This dissertation is dedicated to the memory of three special people who profoundly influenced my life and whose memories serve as a continual source of motivation for me.

First, I dedicate it to my father, Mr. Jimmy Frank Bowman, Sr. (December 8, 1922 – December 8, 2001), who gave me a lasting example of courage, determination, and perseverance even in the face of the blatant system of racial hegemony and the Jim Crow south that he grew up in and lived in. Dad, I vow to always tell your story in my life's work!

Secondly, I dedicate this dissertation to my dear friend, Michael Edward Jones (February 10, 1961 – November 26, 1999), who encouraged me in his unique jovial style as I started this journey. While I did not have our late night conversations to sustain me at the end of this journey, the many memories that he left me with were sufficient to carry me through.

Lastly, I dedicate this dissertation to my dearest friend, Dr. Stephen Anderson Carey (June 1, 1955 – May 6, 1995), who inspired me to walk this journey in his footsteps. He ignited the flames of academic inquiry and discourse for me and fostered a deep sense of love of my culture within me. He was the first to introduce me to the works of Zora Neale Hurston, Frantz Fanon, and W. E. B. Dubois among others. Steve's love of Black culture was infectious. I am deeply indebted to him – without his influence in my life, I probably would never have walked this journey.

I am who I am today and all the richer because these three GREAT MEN were a part of my life!

ACKNOWLEDGEMENTS

We, southern Black men, are frequently called “mama boys.” I wear my title proudly. I undertook this dissertation because of what my mother instilled in me at an early age: she told me that I could be anything that I wanted to be and do anything that I wanted to do as long as I worked hard at it and “got good grades in school.” I believed her; every opportunity that presented itself to reinforce this, she availed herself to. Twice I looked up in high school to see her face as the long Black face at induction ceremonies for the National Honor Society and the National Spanish Honor Society. Seeing her there was so encouraging to me; I wanted to do everything I could to make her proud of me. In retrospect, I am amazed at her actions, since, as a product of the Jim Crow south, she did not have the opportunity to complete high school. She wanted to make sure that I had every advantage in society that she did not have. She not only made sure that I was physically provided for with food and clothing, but she somehow knew that I would need a strong sense of self -worth and self -confidence in order to be successful; she instilled both of these in me. Indeed, it was because of this strong sense of self -confidence that I was able to complete this dissertation. I am grateful to God for my mother, Vera Mae Williams Bowman, and I am grateful to my mother for all that she did to make me who I am. Mother, thank you for making me who I am today!

I am deeply indebted and will be eternally grateful to my major professor, Dr. Thomas Valentine, for helping me to realize my potential and guiding me through the research process. I am honored and humbled to have worked under the direction of one of the most respected researchers in the field of adult education. Dr. Valentine always respected my opinions and

research decisions; he simply insisted that I always be prepared to justify them, and where the justification was insufficient, he always let me know. He insisted that I know the pros and cons of all research decisions. It was only at the end of the process that I realized that he had been more than an advisor; he had taken on the role of mentor and as such insured that I learned what good research was all about. I especially appreciate Dr. Valentine's last challenge to me in finalizing my dissertation: he let me know that it was acceptable as it was then, but that he knew I could make it even better because he knew I had the ability. He wanted me to produce a dissertation that I would be proud of throughout my life. He cared enough to push me not to accept mediocre scholarship. Thanks Dr. Valentine for mentoring and challenging me throughout this process.

I am also deeply indebted to all of the members of my committee who gave of their time to advise me in at the prospectus defense and at the final dissertation defense. To Drs. Ronald Cervero, Mary Frasier, Talmadge Guy, and Robert Hill, I extend sincere thanks for your wisdom, insight, constant support and feedback throughout the dissertation process.

This research was only possible through the support of the participants who wholeheartedly trusted me and my co-interviewer with their stories, experiences, and insights. Hopefully, their willingness to share their lived racial experiences will result in some degree of improvement. I extend special heartfelt thanks to my co-interviewer, Kate Monaghan, who went beyond the duties of a paid interviewer and worked closely with me in planning and executing the interviews for the White participants. Her attention to details and her desire to gather the highest quality data obtainable were evident in her interactions with me. Her unsolicited feedback after the White interviews became an invaluable source of data. Out of this research liaison came what I know will be a lifelong friendship.

Recognition is extended to my good friend Gregory Skeeter who selflessly helped me in transcribing most of the pilot data and some of the data for the subsequent study. His willingness to give of his time to help a friend in need will not be forgotten. Thanks for all that you did! I extend special recognition to my friend Manuel Soloman who helped me to put together the prospectus. He gave of his time to help a friend in need. I invite you, Manuel, to walk this journey in my footsteps. The academy needs many more Black young men who will speak loudly and make our “voices” heard. I extend recognition to Mark Mooney and Dale Burgess, friends and colleagues, who helped me in many ways throughout this process; whether it was by covering a class for me or proctoring an exam, both stood willing to help whenever I called upon them. Dale, I encourage you to complete the doctoral journey you’ve already begun; Mark, I invite you to walk this journey and make your “voice” heard in the academy.

I extend recognition to Dr. Kathy Perdue and to Dr. Glenn Palmer, who both encouraged me to start and complete this journey. Dr. Perdue stood willing to help me in any way possible. As I wrestled with areas of research interest, she served as a sounding board and offered valuable advice. Dr. Palmer and I frequently drove to classes together from Atlanta to Athens; he encouraged and motivated me in the process; our drive conversations helped to keep me motivated and focused on the goal of completing this dissertation. I also extend recognition to my colleague and friend, Professor Kyle Jones, who so graciously gave of her time to assist me in editing this dissertation.

I am grateful for the love and support of my family, many of whom prayed for and encouraged me as I struggled to juggle the demands of completing this dissertation and working fulltime: my sisters, Lula, Betty, Vernell, Wylene, Brenda, Victoria, Shirley, and Fontilla; my brothers, Jimmy Frank Bowman, Jr and Johnny Lutrell. I encourage each of you to foster a love

of education in your children and encourage them to walk this journey also. I am also grateful for the love and support of many in my church family at St. Anthony's Catholic Church in Atlanta, Georgia, who prayed for me and who helped me in locating participants. I am especially grateful to Mr. and Mrs. Rock (Carla) Anderson who went the extra mile in locating participants for both the pilot and the dissertation study. I hope I can return the favor someday.

Lastly, but certainly, not least, I extend warm and sincere thankfulness to Stewart Livingston Fitzgerald Scott, IV, my constant and dependable friend and confidant. He was there to offer support during times of frustration and despair. He always told me that I could complete this task. Whatever the scenario, he stood willing to offer his support. My brother, thank you and know that I did not take your support for granted.

Indeed, I have come a long way since my early years in Columbus, Georgia, at 928 38th Street. My world is much wider in scope and my vision much clearer as a result of my studies and lived experiences. I recognize that my success has not come solely because of my hard work, but also because of the help of the many who love and support me. I am humbled by, and immensely grateful for, the love and support of all who have helped me complete this dissertation.

TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS	v
LIST OF TABLES	xii
CHAPTER	
1 THE PROBLEM.....	1
Background of the Problem	4
Racism in the Criminal Justice System.....	6
The Need for Anti-Racist Education in Continuing Legal Education	10
Statement of the Problem.....	12
Purpose of the Study	12
Significance of the Study	13
2 REVIEW OF THE LITERATURE	15
Introduction.....	15
Background and Origin of Continuing Professional Education	15
The Purpose of Continuing Professional Education	19
Education for Attorneys in the State of Georgia.....	20
Background and Origin of Critical Race Theory	24
Characteristics of Critical Race Theory	26
Background and Origin of the Concept of White Privilege and Whiteness	29
Characteristics of White Privilege	31

	Anti-Racist Education.....	35
	Implications of the Literature for the Present Study.....	38
3	METHODOLOGY	41
	Personal Orientation to the Research.....	42
	Theoretical Framework.....	44
	Design of the Study.....	45
	Study Sample	47
	Data Collection	49
	Data Analysis.....	55
4	FINDINGS.....	58
	Findings Related to Research Question 1: How do White attorneys view the role of race in the legal system.....	58
	Theme 1: Racial Inequality is Pervasive in the Legal System.....	59
	Theme 2: Race Influences Sentencing and Affects the Nature of Interaction Between the Judiciary and Black Attorneys.....	65
	Theme 3: Black Attorneys are Victims of Race-Based Exclusion at all Levels in the Profession	69
	Theme 4: Black Attorneys Must Locate their Practices Near Black Clientele and Near a Diverse Judiciary.....	77
	Findings Related to Research Question 2: How do Black Attorneys View the Role of Race in the Legal System.....	81
	Theme 1: The Judiciary, White Attorneys and Jurors View Black Attorneys as Incompetent	82
	Theme 2: Black Attorneys are Victims of Race-Based Exclusion at all Levels in the Profession	88
	Theme 3: Race Influences Sentencing and Affects the Nature of Interaction Between the Judiciary and Black Attorneys.....	101

Theme 4: Black Attorneys Must Locate their Practices Near Black Clientele and Near a Diverse Judiciary.....	107
Theme 5: Jurors Consider Race in their Deliberations	111
Findings Related to Research Question 3: How do White Attorneys View the Efficacy of Continuing Legal Education in Addressing the Role of Race in the Legal System.....	113
Findings Related to Research Question 4: How do Black Attorneys View the Efficacy of Continuing Legal Education in Addressing the Role of Race in the Legal System.....	124
5 CONCLUSIONS, DISCUSSION AND RECOMMENDATIONS.....	134
Introduction.....	134
Summary of Findings.....	134
Conclusions of the Study	138
Discussion of Conclusion 1: Black and White Attorneys Agree that there is Substantial Racial Inequity in the Legal System.....	139
Discussion of Conclusion 2: Black and White Attorneys Diverge on the Extent to which they would Restructure Continuing Legal Education....	149
Implications for Practice	153
Recommendations for further Research.....	155
Concluding Comments and Personal Reflections.....	157
REFERENCES	161
APPENDICES	
A PILOT STUDY FINDINGS	171
B CONSENT FORM	183
C INTERVIEW SCRIPT	185

LIST OF TABLES

	Page
3.1 Black Participants	50
3.2 White Participants.....	51
4.1 Themes Related to Research Question 1	59
4.2 Themes Related to Research Question 2	82

CHAPTER 1

THE PROBLEM

**“The litigation and the legislation
and executive implementation
did not wipe away three
centuries of slavery and
segregation and discrimination.”
(John Hope Franklin, 1990)**

While attending kindergarten through the third grade in Columbus, Georgia, I was not aware of the race of my fellow classmates – or more accurately, race was not important in those school years because I attended a segregated all Black elementary school. Then came the implementation of forced desegregation; I was forced to attend a school closer to my home that was all White. I was one of the first Black students to attend this school. I remember the feeling of isolation and loneliness; all of sudden, the race of my fellow classmates was overwhelming significant. I remember bringing home my first White friend to the dismay of my father. He was suspicious of “White people” and always warned me not to trust them. This suspicion was based on my father’s great-grandparents’ experiences as slaves and his and my grandparents’ experiences as they struggled to survive in the Jim Crow South.

When I entered junior high school, the experience of isolation and loneliness seemed to become even more intense. While there were more students of color like myself, I found that I had little time or few opportunities to interact with them. “Tracking” resulted in me being placed in classes in which I was often the only person of color. I was painfully aware of my difference in each class. Each time the teacher asked a question, I felt as if all eyes were on me because I was different.

After I started high school, I realized that not only was I different in the eyes of my fellow students who were members of the dominant race, but I was also different in the eyes of my fellow African-American students. As a result of “tracking” in high school, I was assigned to the College Prep Curriculum; while I did want to go to college some day, I did not know that I would always be one of two or three students of color in each class and would be labeled as someone “who was trying to be White” by my fellow Black students. Clearly, race was a startling reality throughout my school years. From my perspective, there was no such thing as a colorblind educational experience.

When I started college at Georgia Institute of Technology in 1978, the experience of loneliness and isolation was even more overwhelming than it had been in high school. Georgia Tech, at that time, had very few minority students and even fewer Black students and was ill-prepared to provide a supporting social climate for Black students. As a result of the efforts of students of color who were enrolled during my tenure at Tech, the administration responded by establishing the Office of Minority Affairs with the express purpose of addressing the needs of students of color. Also, Black students united and formed the Georgia Tech African American Alliance (GTAAA) with the express purpose of providing a voice for African American students and allowing them to enter into an ongoing dialogue with the administration. The lack of a racially supporting social climate at Georgia Tech impacted my academic success and lead to my decision to transfer from the institution.

By the time I entered Graduate Business School at Georgia State University, I was prepared for another lonely, isolated educational experience. I had expected this experience to be easier than undergraduate school had been because I would be a commuter, and I now viewed the world through "realistic" eyes: I *expected* to be treated differently because of my race. I had

this expectation because even though Georgia State University is an urban university with significant minority representation, I realized that representation did not equate to acceptance. I recall the experience of planning a group project; the group I was assigned to decided to meet off campus at one of our member's home, but there was no consideration of holding the meeting at my home after everyone found out that I lived in what they apparently envisioned as a "Black" neighborhood. It was decided instead that we would meet in a group member's home who lived in the Buckhead area of Atlanta. Interestingly enough, my home was larger and would have been much more comfortable.

After graduate business school, I decided to go to law school with the intent of placing myself in a position to make a difference and to address the many injustices in our society which were being perpetuated because of perceived racial differences. I knew from firsthand experience that Black people were treated differently in our society. I wanted to be in a position to effect change.

Unfortunately, I found law school to be the most negative educational experience of all with regards to race. Very rarely was race put forward as a potential explanation for the outcome in cases; as we examined cases for the holding and the rule of law, we did not look at the racial dynamics of the jury and the courtroom itself. We almost never considered the race of the judge and this important factor in regards to sentencing. Yet, I knew that the law was not colorblind, and I did not understand why race was ignored in legal education. There seemed to be a conspiracy of suppression through silence.

My experiences with race in education combined with the view of race passed on to me from my parents have helped to shape who I am and how I view race. For my mother and father, the world was very much Black and White. My father told me about his experience in the Army

as he served in a segregated unit during World War II. He and my mother recounted numerous stories to me of experiences that they had firsthand with the Ku Klux Klan. For example, my mother told me about the abuse the Ku Klux Klan inflicted on my grandfather because they thought he had married a White woman; apparently, my mother's stepmother would "pass" (as White) each time she went downtown in Columbus, Georgia, so she could sit at the front of the bus and be treated like a "lady". Thus, for my mother and father, race was a very real phenomenon.

The experiences of my parents combined with my own experiences, which started in my early school years, have led me to conclude that racism is a permanent fixture in the American landscape.

Background of The Problem

The complex nature of our society dictates that professionals continue to learn in order to remain abreast of the ever-changing knowledge in their field of expertise. Members of the professions make up more than 25% of the workforce and are the primary decision makers for the major institutions and organizations in American society (Cervero, 1988; Merriam and Cunningham, 1989). The special recognition given to members of the professions is a result of leadership roles derived from their technical knowledge and skills. The American public relies heavily on professionals to provide crucial services that are necessary to survive in today's global economy.

Cervero (1989) maintains that because the public relies on professionals for crucial services, these professionals have a significant amount of control over the lives of people in our society. He advances three differing viewpoints – functionalist, conflict, and critical – to explain the relationship between society and the professions (Cervero, 1989). The functionalist approach

stresses the value of professional activity for the maintenance of an orderly society. The key concept in this approach is expertise; there is a consensus over what the elements of good practice are in a given profession. Continuing professional educators simply must help practitioners keep up-to-date and correct existing deficiencies in the field. The conflict approach argues that the professions are in conflict with other groups in society for power, status, and money. The key concept in this approach is power. The importance of professionals in society does not come from their expertise and technical knowledge but, is instead, derived from their power to prescribe what people need. In this approach, continuing professional educators are called upon to be advocates for the professions (Cervero, 1989).

Lastly, Cervero advances the critical viewpoint, in which professionals construct the problem from the situation as opposed to seeing well-defined problems. The key concept in this approach is dialectic. Problem setting as opposed to problem solving is the key to professional practice. The purpose of continuing professional education is to help professionals understand the ethical, political, and technical dimensions of their work (Cervero, 1989). Thus, educators' efforts help practitioners analyze the technical and ethical choices that they make in their professions.

The critical viewpoint is especially relevant to continuing professional education for lawyers in Georgia. In order to confront the evils of racial bigotry effectively in the justice system, lawyers must understand how race is played out in the courtroom and in day-to-day practice. They must understand the relevance of race to the successful practice of law. Lawyers are called upon to breathe life into our constitutional form of government. Mandatory continuing professional education is intended to protect the interest of clients as well as those of the public

at large (Cervero, 1988; Cervero & Scanlon, 1985). The statistics indicate that the interests of people of color are not adequately served by lawyers in our criminal justice system.

Racism in the Criminal Justice System

Almost all problems related to criminal justice issues in the United States today involve issues of race and ethnicity. Consider the following national statistical data (Walker, Spohn, and Delone, 2000):

- Half of all the prisoners in the United States (49.4 % in 1996) are Black, despite the fact that Black people represent only 12% of the United States' population. Even more alarming, the incarceration rate for Black men is seven times the rate for White men (3,250 per 100,000 compared with 461 per 100,000).
- Black people account for 13% of all regular drug users, but account for 55% of those convicted for drug possession and 74% of those imprisoned for drug possession (The Report of the National Criminal Justice Commission, 2002).
- Hispanics comprised 17.5% of all prisoners in 1996, up from only 10.9% in 1985.
- About 40% of the people currently on death row are Black, and 53% of all the people executed since 1930 were Black.

The statistics for the state of Georgia indicate that the problem depicted in the above national data is very much a reality for the state's criminal justice system:

- The incarceration rate for Blacks in the state is 2,149 per 100,000 population, while the incarceration rate for Whites in the state is 519 per 100,000 population. Blacks are incarcerated at a rate of 4.14 times that of Whites (The Sentencing Project, 2004).

- Ninety percent of Georgia's death row cases involved White victims, even though 65% of the victims in Georgia's homicides are Blacks (Southern Center for Human Rights, 2004).
- A study of the Chattahoochee Judicial Circuit in the state of Georgia from 1973 to 1990 showed that prosecutors often met with victims' families to discuss whether to seek the death penalty when the victims were White, but they failed to meet with Black families, even though the majority of homicides in that region involved Black victims (Bright, 1995).
- The district attorney in each Georgia county has sole discretion over when to pursue a death sentence. This means that where a crime is committed in Georgia can be as significant as the type of crime committed in determining who lives and who dies. In the metro-Atlanta area, a person is more likely to be sentenced to death if the murder occurs in a suburban county such as Cobb or Douglas, rather than in the urban counties of DeKalb and Fulton. This means that someone who commits a murder on Paces Ferry Road in Cobb County is much more likely to get the death penalty than if he or she were on the same road just across the Chattahoochee River in Fulton County (The Criminal Justice Coordinating Committee, 2002).

Race and Jury Trials. The O.J. Simpson verdict fueled many discussions about the importance of race in jury trials. Many people concluded that O.J.'s race was the deciding factor for jurors. The final jury in O. J. Simpson's criminal trial was comprised of nine Blacks, one Hispanic, and two Whites. By contrast, the final jury O. J. Simpson's civil trial was comprised of eight Whites, one Hispanic, one person of Middle Eastern descent, one Black, and one person

who identified as being of Asian/Black descent (University of Missouri-Kansas City, School of Law, 2000).

New York Times columnist Maureen Dowd asserted that “Mr. Simpson’s jury in the criminal trial had plenty of evidence, but made a decision based on race” (Dowd, 1996). The seemingly incongruous verdict against Simpson in the civil wrongful death lawsuit brought by the families of Nicole Brown and Ronald Goldman, rendered by a predominantly White jury, seemed to confirm that the racial composition of the jury was the deciding factor (Markowitz & Jones-Brown, 1998). Leonard Pitts, a columnist for the *Miami Herald*, wrote that he has heard many White people express hurt by the contention that their skin color might buy them leniency in the criminal justice system. Pitts explained that White people did not argue with the influence of wealth on the outcome of criminal cases, however, he observed that most White people had a problem accepting the proposition that their Whiteness bought them leniency in our criminal justice system. Many White people, according to Pitts, demand proof that they are privileged because of their skin color. Pitts likened such a demand as proof that fire is hot. Pitts noted that “White people often rightly complain that for too many Blacks, everything is about race, always. But they fail to grasp the corollary truth that for too many Whites, nothing is about race, ever” (Pitts, 2002).

Markowitz and Jones-Brown (1998) examined whether the racial composition of juries affects the verdicts they reached. Their study entailed an analysis of the relationship between the racial makeup of counties within New York State and acquittal rates in those counties over the ten year period from 1986 to 1995. Their study found a close relationship between racial demography and jury behavior. Markowitz and Jones-Brown (1998) theorized that juries with significant Black and Hispanic representation acquit more than White juries because non-White

and White jurors view evidence through different lenses. Jurors are not blank slates whose minds are waiting to be filled with trial facts. Jurors come with an array of preconceptions about the world in which they live. Black and Hispanic experiences with racism and their distrust of police may well lead them to be more suspicious of the prosecution's case. Similarly, White jurors may fall back on stereotyping when information about individuals is incomplete or ambiguous. White jurors with such stereotypes may be more inclined to judge Black defendants negatively. Black jurors, normally having dealt with the full gamut of people within their own race, are able to make more discerning judgments.

Race and Sentencing. Similarly, race is also a significant factor in sentencing in criminal cases. In a study entitled "And Justice for Some", sponsored in part by the United States Justice Department, researchers reported that Black and Hispanic offenders receive harsher treatment than White offenders with similar records at every step of the justice system (United States Justice Department, 2000).

Dozens of studies have been conducted to investigate race and sentence severity. Admittedly, these studies have failed to produce uniform findings of racial discrimination in sentencing. However, many experts have asserted that this is because discrimination against racial minorities in sentencing is not universal, but is confined to certain types of cases, settings, and defendants. Walker, Spohn, and Delone (2000), have asserted that sentencing decisions throughout the 1990s reflected contextual discrimination. For example, judges in many jurisdictions continue to impose harsher sentences on racial minorities who murder or rape Whites and more lenient sentences on racial minorities who victimize members of their own racial or ethnic group. Judges in some jurisdictions continue to impose racially-based sentences in less serious cases; in such "borderline cases", racial minorities get prison while White

offenders get probation. In jurisdictions with sentencing guidelines, judges depart from the prescriptive sentence less often when the offender is Black or Hispanic than when the offender is White. Judges, in other words, continue to take race into account, either explicitly or implicitly, when determining appropriate sentences (Walker, Spohn, and Delone, 2000).

The Need for Anti-Racist Education in Continuing Legal Education

Despite the research data and current statistics which overwhelmingly point to the fact that the American criminal justice system is highly discriminatory, law students are rarely exposed to this reality in their training and education, nor are practicing lawyers made aware of this reality in their mandatory continuing legal education. My review of the CLE offerings through the Institute of Continuing Legal Education (ICLE) in Georgia for the last year reveals that there were no race-related offerings available for the Bar membership.

This is significant because ICLE is the predominant provider of CLE in the state of Georgia. ICLE is seemingly the provider of choice for the Bar because offerings through ICLE result in automatic posting to each Bar member's continuing legal education transcript, while other providers' offerings require additional paperwork in order to post to the transcript. Therefore, most Bar members opt to take courses through ICLE in order to avoid the hassle of the additional paperwork. Organizations such as the National Bar Association, the historically Black national bar association, and the Gate City Bar Association, the Atlanta area Black bar association, have offered some CLE in the past that has addressed the presence of racism in the criminal justice system and the profession. However, such offerings have not been widely marketed and made available to the entire membership of the Bar. Similarly, some of the Black law firms offer in-house CLE that addresses the presence of racism in the criminal justice system

and the profession, however, such offerings are intended for their in-house attorneys and are not typically made available to the entire membership of the Bar.

In the state of Georgia, all active members of the bar are required to engage in a minimum of twelve hours of actual instruction in approved continuing legal education (CLE) programs each year (State Bar of Georgia, 2002). At least one of these hours must be in the area of legal ethics, and at least one hour must be in the area of professionalism. Trial lawyers must complete at least three hours in the area of trial practice. In the year of admission or in the next calendar year, a newly admitted bar member must attend, a practice orientation (currently called “Bridge-the-Gap”) program and an additional 6-hour course (State Bar of Georgia, 2002). An attorney who fails to comply with the Continuing Legal Education (CLE) requirements faces suspension by the Supreme Court of Georgia (the State Bar of Georgia is an “Integrated” bar; as such, it is controlled by the judiciary and not the state legislature). Thus, the providers of CLE and the State Bar have the power to begin to raise awareness of the importance of race and law through the inclusion of the topic in CLE programming.

My review of state bar CLE requirements throughout the United States indicated that the state of California is the only state that includes bias awareness as a part of mandated CLE requirements. Attorneys in California are required to include at least one hour in a program related to the elimination of bias in the legal profession based on sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age and sexual orientation (State Bar of California, 2002). On the other hand, the state of Georgia has not acknowledged the existence of the problem in the legal profession.

A challenge to the planners of mandated continuing legal education in Georgia is the inclusion of anti-racist education in continuing legal education programs. The challenge to

planners is to help Georgia attorneys understand that the entire context, ethical, political, and technical, in which they practice as is advanced in Cervero's critical viewpoint (Cervero, 1989). In order to meet this challenge, program planners must clearly articulate the relevance of race to the practice of law and assess the extent of the problem in the state of Georgia.

Statement of the Problem

Given the documented racial inequities in the judicial system with regard to convictions and sentencing, it is evident that there is a need to address race in the continuing legal education (CLE) requirements in Georgia. The State Bar of Georgia has not officially acknowledged the importance of race in jury decisions and judicial sentencing by imposing a racial awareness CLE requirement or by expanding one of the current requirements such as ethics to include the issue of race. It is not known whether or not the members of the State Bar of Georgia would support such a requirement. Further, it is not known whether or not such support would be based on the personal characteristics of the attorney. Critical race theory (CRT) suggests that support for such race-related CLE requirements would be based on the race of the attorney. However, there is no empirical evidence to date that has tested this CRT assumption. Further, the rationale for attorney support or lack of support for race-related CLE is not known.

Purpose of the Study

The purpose of this study was to determine Georgia attorneys' perspectives on race, the legal system, and their level of support for the inclusion of race-related topics in continuing legal education requirements. In order to accomplish this goal, the following research questions will be addressed:

1. How do White attorneys view the role of race in the legal system?
2. How do Black attorneys view the role of race in the legal system?

3. How do White attorneys view the efficacy of continuing legal education in addressing the role of race in the legal system?
4. How do Black attorneys view the efficacy of continuing legal education in addressing the role of race in the legal system?

Significance of the Study

The study has both theoretical and practical contributions to the field of adult education. This study suggests that critical race theorists are right in their assertion that Black attorneys see race differently because of their everyday lived experiences, and White attorneys view race differently because of White privilege (Delgado, 2001); therefore, program planners must isolate the individual voices of the groups in assessing the need for race-based programs. This study provides CLE program planners with a tool that can be used to isolate the voices of people of color. This study supports the inclusion of anti-racist education in Georgia CLE requirements; the end result would be attorneys who are equipped to identify and address racism in the legal profession. At a minimum, this study provides empirical evidence of the need for such a requirement.

The practical implication of the study rests with its potential to redefine the elements of effective continuing legal education in Georgia. Through the use of the critical race theory perspective, the study may serve to revolutionize the current approach of assessing CLE needs. The results of the study suggest that program planners should intercede on behalf of oppressed groups and offer courses and programs that are relevant to the profession as a whole. Program planners should intercede even where dominant culture support is absent if such courses and programs fit the criterion for justice and fairness in the profession. Additionally, in probing the reasoning of bar members' support of race-related CLE, this study provides CLE program

planners with information that can be used in marketing to its participants. The study identified obstacles that planners will have to overcome in reaching particularly oppressed groups. Finally, the study can be used as the catalyst to broaden CLE's purpose to include fighting racism in the criminal justice system and in the practice of law.

CHAPTER 2

REVIEW OF THE LITERATURE

Introduction

The purpose of this chapter is to review the literature most relevant to the study. The chapter has nine sections: (1) Background and Origin of Continuing Professional Education, (2) The Purpose of Continuing Professional Education, (3) Education for Attorneys in the State of Georgia, (4) Background and Origin of Critical Race Theory, 5) Characteristics of Critical Race Theory, 6) Background and Origin of White Privilege and Whiteness, 7) Characteristics of White Privilege, 8) Anti-Racism Education, and 9) Implications of the Literature for the Present Study.

Background and Origin of Continuing Professional Education

Cervero (1988) identified three approaches for defining a “profession”. The static definitional approach involves developing a set of widespread, universal, and objective standards against which the characteristics of an occupation seeking professionalization would be measured. This approach was pioneered by Flexner (1915) who believed that “certain objective standards” (1915, p. 902) could be formulated. Unsurprisingly, the problem with this approach was an inability to achieve consensus of what standards should be adopted. As a result, this approach is now considered outdated and is no longer used (Friedson, 1986).

Unlike the static approach (Cervero, 1988), the process approach does not embrace an all-or-nothing style in defining a profession. The process approach views all occupations as existing on a continuum of professionalization (Vollmer and Mills, 1966). The process approach

assumes that occupations are capable of undergoing a process of becoming more or less professional over time. There is no absolute point in this development process at which an occupation may be said to have achieved perfect professionalism. The continuum of professionalization is not a one-way street; occupations can also undergo the process of deprofessionalization. A number of authors have examined this possibility of deprofessionalization for even the most professionalized occupations such as medicine (Haug, 1975) and law (Rothman, 1984). An important assumption that the process approach makes is that there is no clear boundary that separates professions from other occupations (Vollmer and Mills, 1966). This is an important notion for continuing professional educators because it means that, “all occupations seeking the ideals of professionalization are worthy of sympathetic study” (Houle 1980, p. 27). Thus, because professions can never reach the point of perfection, the rationale is established for both constant improvement in a profession and continuing learning (Cervero, 1988). The process approach also places an emphasis on understanding a given profession in relationship to society. This emphasis results from the basic process premise that asserts that the professions are necessary for the smooth and orderly functioning of our society.

However, the process approach has been duly criticized because it does not seek to understand the professions in terms of their power positions in society; the process approach does not address the resultant inequalities that are created by virtue of the existence of power relationships. Thus, by failing to account for the processes by which professions gain and use power and authority, this approach does not explain how occupations can come to be viewed as more professionalized (Cervero, 1988).

The socio-economic approach assumes that there is no such thing as an ideal profession and that no set of criteria is necessarily associated with it. In this approach, society becomes the

sole determinant of which occupations should be granted the status and privileges of a profession (Becker, 1962; Friedson, 1986). This approach recognizes that a profession is a title of honor and is highly valued by society (Becker, 1962). Thus in this approach, a profession is determined by which occupations in a specific society at a given historical time have achieved professional status and privileges (Cervero, 1988).

Depending on whether one uses a liberal or conservative slant to interpret census categories, there are currently, somewhere between 18 and 32 million professionals in the United States (Bureau of Labor Statistics, 2002). There is such a wide range in this estimate because of the difficulty in determining what constitutes a profession. According to the *Second College Edition of the American Heritage Dictionary* (Berube, 1985), a professional is a person who follows a profession or one who has an assured competence in a particular field or occupation. This definition has a distinctive socio-economic slant. People are deemed to be professionals solely because society has deemed them to be so; usually, because they have become affiliated with an accredited profession recognized by society.

At present, each state is responsible for the regulation of the professions. States recognize admission to a given profession through the use of designators such as “registered”, “licensed”, and “certified”. These designators are not interchangeable; each has a different meaning that is based on perceived levels of expertise. For example, by allowing a person to use the designator “registered”, the state makes no assurance about the person’s competence to perform in the occupation. As a result, this professional designator is only utilized when the threat to the public health, safety, or welfare from the use of a particular service is deemed to be minimal (Shimberg, 1982). By contrast, the United States’ Department of Health, Education and Welfare defined licensing as:

The process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency necessary to ensure that the public health, safety, and welfare will be reasonably well protected. (Shimberg, 1982, p. 15).

Prerequisites usually required before an applicant is allowed to take a licensing examination include education, experience, minimum age, state residency, and evidence of good moral character. Examples of individuals typically classified as licensed include, lawyers, accountants, and physicians.

Typically, certification indicates a higher level of competency (Shimberg, 1982). To be certified to practice a particular profession means that the state has granted the authority for a licensed individual to publicly assert their mastery of a profession as measured by state established qualifications. Accounting is an example of a profession in which both licensed and certified professionals are granted professional status. Licensed persons can work as accountants, but only those who have gone beyond the minimum competencies demanded of licensing to meet the states' standards of mastery are privileged to use the title of "Certified Public Accountant" (AICPA and NASBA, 1998). Unlike the profession of accounting, the profession of law does not have both licensed and certified designators; each state grants a license to applicants after proof of having graduated from an accredited law school and having passed an extensive competency examination.

The Purpose of Continuing Professional Education

Cervero (1988) has noted that once a profession is established, it seeks to maintain its professional status by encouraging its members to stay abreast of changes in the field. In many professions, this recommendation has become law. For example, in the practice of law, the State Bar of Georgia mandates that professionals engaged in the practice of law must continue their education even after becoming a licensed attorney.

There are several reasons advanced in support of the concept of mandatory continuing professional education. First, professions like mandatory continuing professional education because their members like it and support it. Members embrace it because they recognize that the perception of continued competence is necessary in order to maintain the public's positive opinion and confidence. In order to maintain this perception, most professionals would rather engage in continuing education activities instead of having to undergo periodic reexamination for license renewal or specialty re-certification (Darkenwald and Merriam, 1982). Secondly, professionals like continuing professional education because it helps to elevate the status and raise the prestige of the profession in society. For example, while the state government controls the reexamination process, the profession itself controls continuing professional education activities. This places members of the profession in ongoing contact with other members and gives them an opportunity to appear publicly supportive of their constituents' responsibility to the public good, and it gives the profession an opportunity to generate income through the assessment of fees for continuing professional education activities.

Individual professionals support continuing professional education in many cases. Mandatory continuing professional education gives individual professionals the needed justification to take valuable time away from work in order to engage in continuing professional

education activities. Even though there is little empirical evidence supporting the success of continuing professional education in improving professional competence (Queeney and English, 1994, Streer et.al., 1995), state government and professional organizations routinely make the argument that continuing professional education will improve occupational proficiency. Thus, a professional who has a desire to improve his or her professional competence is empowered by the state's mandate for continuing professional education especially when time and monetary resources are limited.

The general public's support for continuing professional education is a result of an increasing demand for more professional accountability. Mandatory continuing professional education represents a quantifiable technique that the state can use to help professionals reassure the public that professional practitioners have the latest technical knowledge regarding the practice of their professions. Also, mandatory continuing professional education seemingly provides a means of quality assurance without any additional cost to the public. However, these reasons for public support are based on erroneous assumptions. As was previously pointed out, there is little evidence to support the belief that continuing professional education will improve performance (Holt, Streer, and Clark, 1992; Streer et al., 1995) and continuing professional education costs incurred by professionals in the practice of their professions are almost always passed on to consumers (Cervero, 1988; Nowlen, 1988; Shimberg, 1982).

Education for Attorneys in the State of Georgia

In 1883, a small group of lawyers established the Georgia Bar Association. This new professional organization proved beneficial to its members, but, since membership was not required of all Georgia lawyers, it lacked power. The voluntary nature of this association of Georgia lawyers meant that it lacked the necessary power to address the significant needs of the

profession such as imposing uniform discipline throughout the state and the passage of important legislation (State Bar of Georgia, 2002).

By 1925, a trend toward unification became evident in state bars across the country, including the Georgia Bar Association, which would struggle for conversion over the next 40 years, enlisting the aid and support of many of Georgia's most prominent legal minds. The bill to create an integrated bar was finally passed by the Georgia House and Senate in 1963, a move motivated primarily by the concept of regulated self-discipline. "The capstone of the State Bar", said 1964-65 bar president, Hugh M. Dorsey, Jr., "is the power of self-discipline which has been sought so long and is needed so badly. For the first time, all of us can and will be held to answer to the public for the conduct and character of our profession and here we must not, and cannot fail" (State Bar of Georgia, 2002).

Today, the State Bar of Georgia Rules and Regulations, found in the *Handbook of the State Bar of Georgia* (2004), serve as a guide for bar members, officers and staff. According to the Handbook, the State Bar exists "to foster among the members of the Bar of this state the principles of duty and service to the public; to improve the administration of justice; and to advance the science of law" (State Bar of Georgia, 2002). All persons authorized to practice law in this state are required to be members. The State Bar of Georgia has strict codes of ethics and discipline that are enforced by the Supreme Court of Georgia through the State Bar Office of the General Counsel. Through membership dues and other contributions, the State Bar of Georgia is able to maintain programs that mutually benefit its members and the general public.

In the state of Georgia, all active members of the bar are required to engage in a minimum of twelve hours of actual instruction in approved continuing legal education (CLE) programs each calendar year. At least one of these hours must be in the area of legal ethics and

at least one hour must be in an activity approved by the Chief Justice's Commission on Professionalism in the area of professionalism. Trial lawyers must complete at least three hours in the area of trial practice. In the year of admission or in the next calendar year, a newly admitted bar member must attend the Bridge-the-Gap program and an additional 6 hour course (State Bar of Georgia, 2002). An attorney who fails to comply with the CLE requirements faces suspension by the Supreme Court of Georgia. Nevertheless, the State Bar of Georgia does not require continuing legal education hours in race and criminal justice or bias awareness. As such, it can be concluded that the bar administrators have deemed race to be unimportant to the practice of law in Georgia. Of the hundreds of CLE offerings across the state of Georgia during the 2001–2002 year, not a single offering addressed the issue of race and the law. This is somewhat surprising given the increasing number of statistics which indicate the presence of discrimination, across the board, in America's criminal justice system and in the American courtroom. The Institute for Continuing Legal Education (ICLE), the primary provider of CLE in Georgia, and the State Bar have the power to at least begin to raise awareness of the issue within the legal community in Georgia through the inclusion of the topic in its programming. However, ICLE and the State Bar have declined to do so. The State Bar has mandated "remedial" continuing legal education requirements in the past when it has deemed them to be appropriate. For example, the State Bar mandated that all active members of the Georgia Bar had to engage in training in Alternative Dispute Resolution as a means to raise Bar members' awareness of this alternative and to bring attention to the increasing court backlog problem in the state.

The Georgia Bar has not been alone in its reluctance to institute a racial awareness component to its mandated continuing legal education requirements. A review of other states

indicates that, to date, only one state has promulgated rules mandating requirements in this area. California's minimum continuing legal education requirements, section 2.1.3 reads as follows:

At least one [hour] shall relate to elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation (State Bar of California, 2002).

Even so, California provides that instruction in the area of bias elimination may be a portion of a substantive law education activity. This means that the Bar leaves it up to the attorney as to how this requirement will be fulfilled and does not mandate the nature of continuing legal educational requirements in this area. Nevertheless, the fact that California has included bias elimination in its official requirements for continuing legal education in California indicates that the state recognizes bias in the profession as a serious problem that must be addressed with an ongoing educational requirement. This is not a one-time requirement as was the case in Georgia when the Bar mandated continuing legal education in Alternative Dispute Resolution. California's approach indicates that the state bar recognizes that bias and discrimination are systemic and institutionalized. On the other hand, the state of Georgia has not acknowledged the existence of the problem in the legal profession. This is evident in the lack of race-specific topics among the listing of continuing legal education seminars as well as in the refusal to impose the requirements on the bar membership at large. Critical race theory and critical White studies may hold the key in understanding the actions of the State Bar of Georgia in its decision to not impose this requirement in the state.

Background and Origin of Critical Race Theory

Critical race theory has its origins in critical legal studies (CLS). Critical legal studies is an academic discipline that challenges and overturns accepted norms and standards in legal theory and practice. Proponents of CLS believe that logic and structure attributed to the law grow out of the power relationships in society. The law exists to support the interests of the party or class that forms it and is merely a collection of beliefs and prejudices that legitimize the injustices of society. The wealthy and powerful use the law as an instrument for oppression in order to maintain their place in society. CLS posits that the law is politics and it is not neutral or value free. Critical legal studies officially began to flourish in the 1970's as more and more Republican legal scholars were tapped during the Reagan Republican era for federal judge appointments; the more "liberal" scholars were left behind in academe (Gordon, 1990). Among noted CLS theorists are Roberto Unger (1986), Robert Gordon (1987), Morton Horwitz (1994), Duncan Kennedy (1998), and Catharine MacKinnon (2003). These "liberal" scholars believed that the system of law reflected the privilege subjectivity of those in power (Gordon, 1990). These scholars planted the seeds for critical legal studies.

Critical legal studies draw from such diverse fields as social theory, political philosophy, economics and literary theory. Critical race theorists departed from critical legal studies (CLS) because of CLS' undue emphasis on politics and economics in its analysis and its failure to include race. Most of the scholars of color who were originally a part of the CLS movement felt that their voices were not being heard; most of the early leaders in critical legal studies were White men who did not provide a platform for the inclusion of race. Thus, most of the scholars of color departed and planted the seeds for critical race theory (Delgado, 1995).

Critical race theory begins with the notion that racism is “normal, not aberrant in American Society” (Delgado, 1995b, p. xiv), and because it is so enmeshed in the fabric of the United States’ social order, it appears both normal and natural to people in this society (Delgado, 1995). Derrick Bell, a Black man, and Alan Freeman, a White man, (Delgado, 1995) were the earliest writers in critical race theory. Both of these men were distressed over the extremely slow pace of racial reform in the United States. Scholars such as these generally agreed at the time that new approaches were needed and that the civil rights movement of the 1960’s had indeed stalled. Thus, critical race theory evolved as a response to the stalled progress of traditional civil rights litigation. Critical race theory, as a form of oppositional scholarship, challenges the experiences of Whites as the normative standard and grounds its conceptual framework in the experiences of people of color (Delgado, 1995).

Derrick Bell was the first Black person on the faculty of Harvard’s law school. Bell lobbied continuously for increased minority presence on the Harvard law faculty– but to no avail. Eventually, he took a leave of absence in protest and vowed not to return until such blatant discrimination was corrected at Harvard. He eventually resigned his tenured position over this issue. While at Harvard, he developed and regularly taught a course that is now considered to have been one of the seeds of critical race theory. His two early books–*And we Are Not Saved: The Elusive Quest for Racial Justice* (Basic Books, 1987) and *Faces at the Bottom of the Well: The Permanence of Racism* (Basic Books, 1992)–are considered to have been seminal works in critical race theory. In his books, Bell uses metaphorical tales and allegories to make his points with regard to the existence and importance of race in our society. He engages in conversations with a fictitious Black female lawyer, Geneva Crenshaw. Bell argues in his books that racism is a permanent fixture in America, and as such, it does not make sense to pass laws designed to

“eliminate” it. He contends that the objective of those in power who pass such laws is not to eliminate racism but to maintain the status quo. He cautions us to always look to the real underlying motivation in the promulgation of such laws. For example, he contends that the Civil Rights Act of 1964 was a political move designed to protect the economic interests of those in power from the continuing social unrest climate of the 1960’s. He points out that the primary beneficiaries of anti-discrimination laws have been White women and not people of color. For example, although the policy of affirmative action is under attack throughout the nation, it is a policy that also has benefited Whites (Bell, 1992). A close look at the statistics indicates that the major beneficiaries of affirmative action hiring policies have been White women (Guy-Sheftall, 1993). The logic of this argument is that many of these women earn incomes that support households in which other Whites live—men, women, and children. Thus, White women’s ability to secure employment ultimately benefits Whites in general.

Characteristics of Critical Race Theory

Critical race theorists consider race up close and personal; narratives are used to provide the stories that bring some understanding of the unstated assumptions of privilege. Thus, the experience of racial oppression has important aspects for developing a critical race theory analytical standpoint. The primary reason that stories or narratives are so important among critical race theorists is that they add necessary contextual contours to the seeming objectivity of positivist perspectives (Ladson-Billings, 1998). These stories provide the necessary context for understanding, feeling, and interpreting racial experiences. The typical ahistorical and acontextual nature of much of law tends to mute the voice of the oppressed (Delgado, 1990). Therefore, much of the critical race theory scholarship has focused on the role of “voice” in bringing additional power to the legal discourses of racial justice. Delgado (1990) argues that

people of color speak with experiential knowledge about the fact American society is deeply racially structured. This structure gives their stories a common framework warranting the term “voice” (Delgado, 1990). According to Delgado (1989), the use of voice or “naming your reality” through the use of narrative stories, allows critical race theorists to infuse the viewpoints of the racially oppressed into their efforts to reconstruct a society burdened by racial hegemony (Barnes, 1990). Delgado (1989) suggests that there are at least three reasons for “naming one’s own reality” in legal discourse: (a) much of “reality” is socially constructed, (b) stories provide members of out-groups a vehicle for psychic self-preservation, and (c) the exchange of stories from teller to listener can help overcome ethnocentrism and the dysconscious (King, 1992) drive or need to view the world in one way.

Critical race theory recognizes that racism is endemic to American life. Thus the question is not so much how or whether racial discrimination can be eliminated while maintaining the integrity of other interests implicated in the status quo such as federalism, privacy, traditional values, or established property interests. Rather, we should ask how these traditional interests and values serve as vessels of racial subordination (Delgado, 2001).

Critical race theory insists on a critique of liberalism (Ladson-Billing, 1998). Crenshaw (1988) argues that the liberal perspective of the “civil rights crusade as a long, slow, but always upward pull” (p. 1334) is flawed because it fails to understand the limits of the current legal paradigm to serve as a catalyst for social change because of its emphasis on incrementalism. Critical race theory argues that racism requires sweeping changes, but that liberalism has no mechanism for such change. Instead liberal legal practices support the painstakingly slow process of arguing legal precedents to gain citizen rights for people of color (Delgado, 2001).

Critical race theory challenges ahistoricism and insists on a contextual and historical analysis of the law. Critical race theory insists on recognition of the experiential knowledge of people of color and our communities of origin in analyzing law and society.

There is no canonical set of doctrines or methodologies to which critical race theory scholars all seem to subscribe. But the literature suggest that these scholars are unified by two common interests: (a) understanding how a “regime of White supremacy and its subordination of people of color have been created and maintained in America” (Crenshaw, Gotanda, Peller, & Thomas, 1995, p. xiii), and (b) changing the bond that exists between law and racial power in United States. Critical race theory has matured to include gay-lesbian issues and inter-group racial relations. This is evident by the inclusion of these topics in Delgado’s recent edition of *Critical Race Theory: The Cutting Edge* (Delgado, 2001).

In summary, five themes seem to be common in the literature on critical race theory. First and foremost is the theme that racism is ordinary and not aberrational; it is a part of America’s social fabric. Secondly is the theme of interest convergence; this means that the interests of White elites (a material interest) and the interests of the working-class (a psychically defined interest) are both advanced by the presence of racism; thus, there is very little motivation to eradicate it. Thirdly, the social construction thesis is prevalent in the critical race literature. This theme contends that race and races are the products of social thought and relations. Race is held not to be a fixed, inherent, and an objective construct. This theme commonly points to the lack of a biological or genetic reality in the definition of race. Race is considered to be nothing more than a social category that the dominant culture has invented and manipulates. This theme addresses the way in which society racializes different minority groups at different times based on a response to the changing needs of society. For example, the labor market may motivate

society to shift its attention away from Black people to Mexican or Japanese agriculture workers. Usually associated with this theme in the literature is the notion of intersectionality and anti-essentialism which points to the reality that no person has a single unitary identity. For example, a Black person may be Jewish or gay and a White feminist may be Jewish. Lastly, the theme of voice and the notion that the voice of people of color is essential to the dialogue on race. This notion maintains that racialized minorities share a common history of oppression and may be able to communicate matters of racism to White people that they would otherwise not know (Delgado, 2001).

Background and Origin of the Concept of White Privilege and Whiteness

White privilege has its historical origins in the institution of slavery. Early Colonial landowning legislators decided to codify slavery with laws that became known as the “Slave Codes” and to equate “slave” with “Negro”. Prior to 1680 servants in the colonial world could be of African or English decent. Servants were protected to some extent by the English poor laws. The Slave Codes enacted from 1680 through 1705, legalized chattel slavery (the child of an enslaved woman would be enslaved for a lifetime) and severely restricted the rights of free Africans. These Codes institutionalized the world’s first system of racialized slavery because they equated “slave” with “Negro”. The Codes also established the rights and restrictions for servants. In time, servant came to mean “White”; servant replaced English, Christian or Wench to refer to poor or indentured Europeans. As the Codes tightened the legal noose around the neck of enslaved Africans, they also loosened the legal bonds of English indentured servants. English or White servants were granted specific forms of privilege or preferential treatment which was specifically denied to slaves or Negroes. For example, the Codes stipulated that servants could challenge unjust behavior on the part of their masters in the courts; servants, both

men and women, were entitled to specific freedom dues, paid in tobacco, the legal tender of the colony, when their term of servitude was over. Servants could get a small plot of land, provided they promised to guard the frontiers. Poor White males were offered the first paid jobs in the colony—as bounty hunters on the slave patrols. They were paid bounties for every slave that they caught (Allen, 1997).

All of the aforementioned privileges were specified as being available only to White people. If any poor Whites were found to have acted in solidarity with any Africans, they were physically branded, and their privileges were taken away. This practice made the term “White” become synonymous with “privilege” in Colonial law (Allen, 1997). Thus the word “White” became a political term which was specifically created by colonial rulers to prevent oppressed people from different continents from uniting in response to their shared conditions and confronting their common oppressors.

Initially, White Jews were not recipients of the benefits of White privilege. However, it did not take American Jews long to realize that they could “pass” as White and become the recipients of White privilege. Because these White Jews were granted relative access to resources that were not accessible to those who did not have White skin, they have been able to acquire dominance and power within Jewish communities both in Israel and the Diaspora. This White privilege has enabled White Jews to reproduce their own Ashkenazi/Eastern European, White-skinned image as the authentic Jewish identity in questions of belonging and membership within the worldwide Jewish community. This echoes the reality that race is not a “science”, but is in fact, a social construct created by the dominant culture to maintain its position of privilege. There are no genetic characteristics that are possessed by all Black Americans but not by White Americans; similarly, there are no gene clusters or single gene which is held in common by

White Americans but not in non-White Americans. The data compiled by scientists demonstrate, contrary to popular belief, that there is greater genetic variation within the populations typically labeled as African-American and White than between these two groups (Lopez, 1995).

Biological race is an illusion that has been used to cloud the true nature of race as a social construct. As a matter of fact, it can be argued that the system of racial classification in place today results not from the desire of multiracial persons to identify with a particular racial group, but rather from the statutory and case law developed over more than 200 years of legal history in this country (Ferrante, J. and Brown, Jr., P., 1998). Omi and Winant (2002) have noted that because race is a social construct, discussions concerning race are necessarily political and that race is linked to the evolution of hegemony in our society. These attempts to define race and to maintain the illusion of biological race were motivated by the need to protect White privilege.

Characteristics of White Privilege

White privilege is the package of benefits granted to people in our society who have White skin (Wildman and Davis, 1996). This package of privileges that White people have been granted allows them free pass to certain aspects of our society that are not easily available to people of color. Privilege has several elements. First, the characteristics of the privileged group define the norms of society; these characteristics become societal benchmarks against which all other groups are measured. Second, members of the privileged groups can rely on their privilege and avoid objecting to oppression. Thus, because of these reasons, it is almost impossible for the holders of privilege to see it as privilege (Wildman & Davis, 1996).

In one of the most popular essays on White privilege, McIntosh (1996) describes several of these privileges as she attempts to unravel the web of White privilege. According to McIntosh (1996), Whites are taught not to recognize White privilege just as males are taught not to

recognize male privilege. McIntosh enumerates some 46 privileges that Whites take advantage of each day that people of color cannot take for granted. These privileges include (McIntosh, 1996):

1. I can, if I wish, arrange to be in the company of people of my race most of the time.
2. I can turn on the television or open to the front page of paper and see people of my race widely represented.
3. Whether I use checks, credit card, or cash, I can count on my skin color not to work against the appearance of financial reliability.
4. I am never asked to speak for all the people of my racial group.
5. If a traffic cops pulls me over or if the IRS audits my tax return, I can be sure I haven't been singled out because of my race.
6. I can worry about racism without being seen as self-interested or self-seeking.
7. If my day, week, or year is going badly, I need not ask of each negative episode or situation whether it has racial overtones.
8. I can be late to a meeting without having the lateness reflect on my race.
9. If I have low credibility as a leader, I can be sure that my race is not the problem.
10. I can expect figurative language and imagery in all of the arts to testify to experiences of my race.

According to McIntosh, her skin color was an asset for any move that she wanted to make (McIntosh, 1996). She contends that she received daily signals and indications that she and other White people counted and that others were simply not trying hard enough (McIntosh, 1996).

Whiteness is not a monolith, rather, as with the African-American category, it is socially constructed. Whiteness is understood in relation to other people (Denevi, 2001)

–primarily Black people. American culture has sustained Whiteness as the norm along with White superiority. Whiteness must be understood as a system of ideology that has privileged some and excluded others (Denevi, 2001). Frankenburg (1993) examined the meaning of Whiteness and race for White women. She found Whiteness to be a complex concept of racism with multiple layers. She maintained that Whiteness, in addition to class and gender, is constructed along with other racial and cultural indicators. She argued that the term “Whiteness” “signals the production and reproduction of dominance rather than subordination, normativity rather than marginality, and privilege rather than disadvantage.” (Frankenburg, 1993, pp. 236-237). Frankenburg’s research showed that the construction of cultural and ethnic (White) identities are forged by racism, race, class, gender, power, privilege, domination, history, and the particular needs and goals of the individual. Some White women, according to Frankenburg (1993), see themselves first as racial beings.

Frankenburg’s definition of Whiteness has three dimensions. First, Whiteness is a location of structural advantage and of race privilege. Secondly, it is the position from which White people look at themselves and the world. Whiteness is the lens through which White people view the world. Lastly, Whiteness is placed in the position of the norm; thus, it has not been necessary to look at Whiteness (Frankenburg, 1993).

Jensen (1998) describes White privilege as follows:

When I seek admission to a university, apply for a job, or hunt for an apartment, I don’t look threatening. Almost all of the people evaluating me for those things look like me—they are White. They see in me a reflection of themselves and in a racist world that is an advantage. I smile. I am White. I am one of them. I am not

dangerous. Even when I voice critical opinions, I am cut some slack. After all, I'm White (p. C1).

Jensen and McIntosh both describe in their writings how Whiteness and White privilege have affected them. Both agree that White privilege is complex as would be most other social phenomenon. Thus, rather than telling how White privilege has affected them in their lives, they tell how White privilege has played out in their lives.

Recognition of the concept of Whiteness is necessary in order to improve race relations in the United States (Hooks, 1990). Attention to Whiteness shifts the emphasis from diversity to the relations of power and privilege that construct and maintain racial identities. Hooks (1990) has noted that

In far too much contemporary writing . . . race is always an issue of otherness that is not White; it is Black, brown, yellow, red, purple, even. Yet only a persistent, rigorous, and informed critique of Whiteness could really determine what forces of denial, fear, and competition are responsible for creating fundamental gaps between professed political commitment to eradicating racism and the participation in the construction of a discourse on race that perpetuates racial domination (p.54).

Similarly, Williams (1997) argues that one of the reasons that conversations and dialogue about race in America are doomed to frustration and failure is that the notion of Whiteness as race is almost never brought into question. Thus, critical race scholars have turned their attention to Whiteness itself with an eye toward changing the acceptance of Whiteness as the norm by the dominant culture.

Whiteness has no formal content. Whiteness is a socio-historical form of consciousness that was created at the intersection of capitalism, colonial rule, and the emergent relationships among dominant and subordinate groups (Clark & O'Donnell, 1999). The White bourgeois has appropriated the right to speak on behalf of everyone who is non-White while denying voice and agency to non-Whites in the name of civilized humankind (Clark & O'Donnell, 1999). According to Bonnett (1996), Whiteness is neither a discrete entity nor a fixed, asocial category. Rather, it is an "immutable social construction" (p. 98). Whiteness, and the meanings and effects attributed to it, is always in a state of flux and fibrillation (Clark & O'Donnell, 1999). McLaren (1999) has said that Whiteness is not a pre-given but is instead a multifaceted collective phenomenon that results from the relationship between the self and the ideological discourse, which are constructed from the local and global surroundings. Whiteness is "fundamentally Euro- or Western-centric in its episteme" (p. 36). Whiteness in American culture can be understood through the social consequences it provides for those who are considered to be non-White. This manifestation of Whiteness is evident in the criminal justice system, the educational system, and in American businesses. This is because Whiteness displaces Blackness and brownness (other than Whiteness) into a signifier of deviance and criminality within social, cultural, cognitive, and political contexts.

Anti-Racist Education

Dei (1996) has defined anti-racist education as "an action-oriented strategy for institutional, systemic change to address racism and the interlocking systems of social oppression" (p. 25). The discourse about anti-racist education had its start in Great Britain and later emerged in Canada, Australia and the United States. Anti-racist educators name race and

social difference as the primary issues of power and equity rather than as matters of cultural and ethnic variety (Dei, 1996).

Anti-racist education embraces a broad definition of race and racism that extends beyond the view that skin color is the only signifier of difference. Anti-racist education as a discourse contrasts the historical processes of European colonization, cultural and political imperialism, and the enslavement of the world's indigenous and non-White peoples to the simplistic notions of racial domination and difference based on skin color and natural difference. This contrast is designed to lead to a discussion and understanding of how current processes of racialization manifest themselves in post modern society (Miles, 1989; Abdo, 1993; Khayatt, 1994; Reed, 1994). The anti-racist discourse has concluded that through the process of racializing society, social groups are distinguished and subjected to differential and unequal treatment on the basis of supposedly biological, phenotypical, and cultural characteristics (Miles, 1982).

Anti-racist education acknowledges that there are moral and immoral aspects of education. The purpose of anti-racist education is to rupture the status quo through the anti-racist educational practitioner's social and personal commitment to political activism. Anti-racist educators are expected to ground their discussions about the oppression of people in the harsh, lived realities and experiences of oppressed people. The power relationships in society are put at the center of the discourse on race and social difference. The anti-racist discourse examines the ways in which racist ideas and individual actions are entrenched and (un)consciously supported in institutional structures (Simmons, 1994; Lee, 1994).

Dei (1996) has identified 10 principles of anti-racist education. These principles were initially developed to embody the viewpoints and values which were characteristics of the

Canadian pursuit of anti-racist education; they have universal applicability and can be used to describe anti-racist education around the world. The principles are as follows:

1. Anti-racist education recognizes the social effects of race even though race as a concept has no scientific basis. This is because race has social meanings which are connected to the lived experiences of people of color in White-dominated societies.
2. Anti-racist education teaches that in order to understand the full social effects of race, one must comprehend the intersections of all forms of social oppression, including how race is mediated with other forms of social difference. Therefore, anti-racist discourse must include gender, class, and sexuality.
3. Anti-racist education challenges White male power and privilege and questions their rationality for dominance in our society. While anti-racist education recognizes the power and privilege positions of all members of society, the focus is on institutionalized power and the systemic forces of society that maintain privilege for White males.
4. Anti-racist education challenges the marginalization of subordinated groups in society and the wholesale discounting of the knowledge and experience of these subordinated groups. Anti-Racist education calls for creating spaces for everyone, but particularly for marginal voices to be heard.
5. Anti-racist education provides that every form of education must provide for a holistic understanding and appreciation of the human experience. This comprises the social, cultural, political, ecological, and spiritual aspects of the human experience.
6. Anti-racist education focuses on the notion of identity and examines how a student's identity is linked to schooling. Anti-Racist education recognizes that learners are not disembodied generic beings.

7. Anti-racist education acknowledges the need to confront the challenge of diversity and difference in society through formal or organized learning experiences such as school.
8. Anti-racist education acknowledges the traditional role of the education system in producing and reproducing not only racial, but also, gender, sexual and class-based inequalities in society.
9. Anti-racist education stresses that the problems that learners experience cannot be understood in isolation from the material and ideological circumstances in which learners find themselves. Instead of blaming the victim, as is often done, a society is encouraged to look at social conditions which may explain the problems of disenfranchised groups
10. Anti-racist education questions pathological explanations of the family or home environment as a source of the problems that young learners, in particular, experience.

To engage in effective anti-racist education, the educator must have a knowledge of how to deal with resistance. The educator cannot be afraid of resistance (Lee, 1993). The educator must be able to deal with opposition and resistance issues on a regular basis with relative comfort. The anti-racist educator stresses the relevance of what is taught and learned to the material conditions of everyday existence for all members of society (Dei, 1996).

Implications of the Literature for the Present Study

The literature in critical race theory, critical white studies and whiteness, and Anti-racist education are concerned with liberating people of color from oppression. Critical race theory seeks to expose the reality of racism as it is lived by the oppressed. As such, the oppressed are the primary messengers. Through their narratives, we see racism as it exists. Critical race theory gives voice to the oppressed. The literature on whiteness and White privilege is the flip side of critical race theory. If society systematically oppresses an entire race of people, this oppression

must necessarily benefit some other group—hence the concept of White privilege. Anti-racist education addresses the whole being of the learner in an educational experience and seeks to bring about change and to use education as a tool to raise awareness concerning racial inequality in society . While Anti-racist education has not yet been applied to continuing professional education, it could serve as a useful tool in addressing the issue of race in the professions.

White people cannot describe and define racism as it exists in American culture according to the tenets of critical race theory. Only those who are oppressed can do so. White people are the beneficiaries of White privilege. They can talk about the benefits they experience as the dominant culture with power. However, before they can do so, they must first acknowledge the existence of racism since White privilege is the opposite of racial oppression. The exposure of White privilege is a more difficult task than the exposure of racism and racial oppression. For White people to acknowledge White privilege is to not only acknowledge being in a position of privilege but also of being in a position as a perpetrator of racial oppression.

Critical race theory, critical White studies, and anti-racist education start from the position that race is a social construct that has been used by the dominant culture to maintain its superior position in our hegemonic society. The literature in critical race theory, critical white studies, and anti-racist education seeks to engage the academy in a dialogue on race issues with an eye toward bringing about change. Critical race theorists do not believe that racism can be eradicated from American culture. Critical race theorists are more “radical” in their approach and believe that sweeping changes are necessary if change is to come about. Derrick Bell (1990) has argued that racism is permanent and that our approach to dealing with it as a problem in American culture must change if there is to be any progress. The literature in critical white studies (i.e., white privilege and whiteness) suggests that change is possible through the exposure

of White privilege—even though such change might be slow and incremental. The literature in anti-racist education identifies race and social differences as the primary determinants of power and position in society; education is seen as the key to change through challenging society's racial structure. I would contend that most of the scholars in critical White studies would agree that White privilege is a permanent part of American society similar to the argument that Bell (1990) makes regarding racism from the critical race theorist's perspective. Similarly, anti-racist education scholars would also agree that racism is probably a permanent part of society but can be diminished in its impact over time through ongoing education.

The use of critical race theory and critical White studies in research in the field of education has been limited at best. To date, neither has been applied to research in the adult education and continuing legal education in particular. Additionally, Anti-racist Education has not been applied to continuing professional education. Yet, critical race theory and critical White studies hold tremendous promise in explaining the absence of programs addressing race in the continuing legal education requirements in the state of Georgia and anti-racist education holds tremendous promise as a tool that can be incorporated into continuing legal education programs to raise awareness of the impact of race in the profession.

CHAPTER 3

METHODOLOGY

The purpose of this study was to determine Georgia attorneys' perspectives on race and the legal system, and their level of support for the inclusion of race-related topics in continuing legal education requirements. In order to accomplish this goal, the following research questions were addressed:

1. How do White attorneys view the role of race in the legal system?
2. How do Black attorneys view the role of race in the legal system?
3. How do White attorneys view the efficacy of continuing legal education in addressing the role of race in the legal system?
4. How do Black attorneys view the efficacy of continuing legal education in addressing the role of race in the legal system?

This chapter will describe the methodology that was employed in a qualitative study that was designed to answer the aforementioned questions. This chapter is organized into three major parts. Part one will describe my personal orientation to research and discuss how my values and life experiences may have affected my interpretation of the data. In the second part, I will present a framework for the research and discuss both the conceptual underpinnings of the study and the broad logic of some of the methodological choices I made in conducting the study. In the final part of this chapter, I will describe the sample, data collection, and analysis employed in the study.

Personal Orientation to the Research

In chapter one I discussed my views about race and how those views were forged by my parents' experiences in the Jim Crow south. In this section, I will address how my views regarding the connection between race and the criminal justice system have been forged out of my past experiences. In order to understand this study, it is necessary that the reader know as much about my "subjective self" as is possible. Patton (1992) has noted that:

It is helpful to know that scholarly philosophers of science now typically doubt the possibility of anyone or any method being totally objective. Subjectivity is inevitable. The point is to be aware of how one's perspective affects fieldwork, to carefully document all procedures so that others can review methods for bias, and be open in describing the limitations of the perspective presented. Indeed, the idea that findings constitute a perspective rather than the TRUTH is closely related to the issue of objectivity (p. 482).

As a doctoral candidate in adult education, who was conducting research about the significance of race to the practice of law and the possibility of racial inequity as a topic for continuing legal education, in itself suggests that I believe that continuing legal education can be effective in addressing the issue. I have been a member of the state bar of Georgia for the past eleven years. In that time, I have engaged in yearly mandated continuing legal education as is required to maintain my license to practice law in Georgia. Additionally, as a member of the bar over this period of time, I have observed that most of the cases that I encountered and those that my colleagues encountered in criminal law were almost always colored by race. I find the

connection between race and the practice of criminal law to be so clearly defined that I have often felt overwhelmed by the challenge to adequately represent clients of color.

Indeed, part of my motivation for wanting to become an attorney was my desire to help fight some of the many injustices that I witnessed in the world in which I grew up. I recall vividly the death of my first cousin, who was killed at the age of seventeen by policemen in Columbus, Georgia, at a high school dance; the policemen detained him in the principal's office after an altercation at a dance in the school gymnasium, and somehow, mistakenly concluded that he had a weapon on him and shot him. There were no witnesses other than the police. After a brief investigation, the case was closed and the police shooting was labeled as justified. Unfortunately, such stories of police shootings of innocent young Black men remain a problem today, and in some instances have sparked unrest and riots in the Black community. After the death of my cousin when I was just a teenage boy, I concluded that the criminal justice system in this country did not value the lives of young Black men.

Further, my experiences with law enforcement and the criminal justice system have served to color my view of the impact of race on law enforcement and the criminal justice system. After graduation from undergraduate school, I accepted a position with a company in Lewisville, Texas. I decided that I'd rather live in the north Dallas area than in Lewisville. The area I chose to live in had almost no Black residents at the time. Shortly after moving in, I was stopped by the police and questioned as to where I was going and why I was in the neighborhood. This happened on more than one occasion. I later relocated to the Atlanta metropolitan area. I bought a townhouse in Marietta, Georgia. Once again, I found myself being similarly harassed by law enforcement. On one occasion, as I was returning home late at night, I was followed to my driveway by policemen. I was again questioned as to why I was in the

neighborhood. I explained to the officers that I was at home and pointed to my townhouse. This experience was the final straw and prompted my decision to move to a predominantly Black neighborhood in DeKalb County, Georgia.

When I encountered critical race theory in my doctoral studies and reflected on the above mentioned experiences in light of the major tenets of the theory, it was as if I had suddenly discovered the voice which could adequately articulate what I already inherently believed to be true. Namely, I believe that racism is a permanent part of American culture. However, this does not mean that positive change and improvement are not possible. Critical race theory holds that race is a social construct, and as such, it can be de-constructed, therein, lies the hope for the future.

Theoretical Framework

A paradigm is a term used to describe a particular way of viewing the world. Critical race theory (Delgado, 2001) represents a different paradigm that can be used to explain the continued existence of racism in the United States. Critical race theory maintains that racism is endemic to American life. Critical race theorists have two common interests: (a) understanding how a “regime of White supremacy and its subordination of people of color have been created and maintained in America” (Crenshaw, Gotanda, Peller, & Thomas, 1995, p. xiii) and (b) changing the bond that exists between law and racial power in the United States (Delgado, 2000). Critical race theory advances its two primary interests by giving voice to the race-related experiences of people of color. Critical race theorists maintain that because White and Black people experience race differently, the only way to understand the extent of the race problem in this country is to give “voice” to the race experiences of people of color. In so doing, a wide disparity in perceptions will be revealed. This disparity can be partly attributed to the racial

experiences of Black people and to the concept of Whiteness and White privilege that White people in America enjoy.

Delgado (1989) has maintained that in allowing people of color to “name their own reality” critical race theorists infuse the viewpoint of the racially oppressed into their efforts to reconstruct a society that is burdened by racial hegemony. This is necessary because White people as holders of White privilege do not see racism; this is because the privileged group’s characteristics define the norms of society. Thus, it is almost impossible for the holders of privilege to see it as privilege.

This study explored the assertion advanced by critical race theorists that Black people view race differently than the dominant culture. My objective is to help change the bond that exists between law and racial power in the United States. Specifically, critical race theory informed this study by providing the analytical lens that was used in discussing the findings.

Design of the Study

After consultation with my committee and my major professor, I determined that a qualitative methodology was the most suitable methodology for this study. I was interested in the perspectives of Black and White attorneys regarding the impact of race on the profession of law from their personal experiences as well as their perspectives as to the efficacy of continuing legal education in addressing the issue of race. Bogdan & Biklen (1992) have referred to qualitative research as a way of understanding human behavior and experience from the perspectives of those being studied. Further, qualitative research methodology assumes that there are multiple realities in the world. Thus, the world is made of subjective phenomenon that can be interpreted differently (Bogdan & Biklen, 1992; Denzin, 1978, 1989; Kidder & Fine, 1987; Merriam, 1998; Patton, 1990; Scott, 1991). Therefore, the individual experiences of the

participants in the profession become vitally important to uncovering the significance of the “phenomenon” of race in the profession of law.

I chose grounded theory as the qualitative research methodology because I was interested in discovering the role of race and describing this role in the legal profession. Grounded theory was developed by Barney Glaser and Anselm Strauss in the 60s and deals with the generation of theory from data. According to Glaser and Strauss (1967), researchers using grounded theory start with an area of interest, collect data, and allow relevant ideas to develop. Grounded theory research emphasizes discovery (Merriam & Simpson, 2000). Merriam & Simpson (2000) have argued that grounded theory is particularly suited to investigating problems for which little theory has been developed. Grounded theory can provide help in situations where little is known about a topic or problem area, or to generate new ideas in settings that have become static or stale. In a grounded theory study, the explanation of an area of human interaction or a social process emerges from a grounded theory study as either substantive or formal theory.

Substantive theory deals with phenomena limited to particular real-world situations such as nursing home care, the academic life of community college adult students, or the budgeting of community resources. Formal theory is more abstract and general and usually requires analysis of data from more than one substantive area. This study generated substantive theory limited to the practice of law in the state of Georgia.

Before embarking on the present study, a pilot study was conducted in order to assess whether or not Black members of the bar perceived race to be a significant issue for the profession (see appendix A). I restricted the pilot to Black attorneys because critical race theory argues that if a researcher wants to know how race is experienced in a culture, then the researcher should ask those who are the targets of racism. Therefore, I concluded that if I

uncovered the potential existence of a problem from the perspective of Black attorneys, race was an issue for the bar. All that would be left would be to determine the extent of the problem and to test the assertion of critical race theory that Black and White attorneys would see race differently. Critical race theory posits that race is the determining factor in how a person will view the role of race in their lives and in the greater society; the present study tests this assertion. The complete findings of the pilot study are listed in Appendix A.

Further, all interviews were conducted face-to-face with the exception of one interview which was conducted and recorded over the phone in the pilot study prior to final research design. Face-to-face interviews provide much richer data than telephone interviews because they allow the interviewer to observe the body language and facial expressions of the participant. Such observations provide important cues to the interviewer as to the level of comfort for the interviewee and whether or not an interviewee's responses were open and candid. Although the one telephone interview was adequate, clearly the face-to-face interviews from the both the pilot and the present study, provided much richer data.

Study Sample

The population of interest for this study was the active members of the Georgia State Bar Association. In order to conduct the present study, I needed to identify White and Black attorney participants and find out their views regarding race, the legal system, and continuing legal education.

Recruitment of participants. Attorneys were located through personal networks. As a member of State Bar of Georgia, I tapped into my personal network of Black attorneys in the Atlanta area in order to identify potential Black participants for the study. Locating White

participants was more challenging because I had very few contacts that I could rely on; only one of the White attorney participants was identified through my personal network.

In order to avoid the effects of cross-racial interviewing, I employed the use of a White co-interviewer as will be discussed in the data collection section below. Most of the White attorney participants were identified through the personal contacts of some of my committee members. Moreover, all of the White attorney participants were contacted by my White co-interviewer and interacted only with the White co-interviewer. While, my name and contact information were included on the consent form that each were asked to sign, the White participants never saw nor interacted with me. Similarly, the Black participants never saw nor interacted with the White co-interviewer. In so doing, I preserved the integrity of the data by shielding it from the effects of cross-racial interviewing.

Most of the Black participants practiced law in the Atlanta metropolitan area, and most of the White participants practiced law in the Athens area. Inactive Bar members were excluded because these members are not required to engage in continuing legal education, and in fact, may not even be engaged in the practice of law. I attempted to include attorneys from as many different practice areas and backgrounds as possible.

As the data collection process with the Black attorneys progressed, I noticed how similar the data was to the data that I had collected in conducting the pilot study. Many of the themes which emerged in the present study had also emerged from the pilot study data. Also, there were insights from the pilot sample data that I did not want to lose; therefore, I decided to merge the pilot data with the data for the present study. Glaser and Strauss (1967) note that among other sources, previous research is a potentially valuable data source when using grounded theory research methodology. This merger made it evident that I had reached the point of data

saturation; I was getting very similar data from the Black attorney interviews, therefore, for the present study I decided to cease data collection after the seventh interview with the Black participants. I continued data collection among the White participants until I was sure once again that I had reached the point of data saturation. After analyzing the eighth interview with a White attorney, I was confident that I had reached the point of saturation; however, I decided to continue collecting data in order to be certain. I then conducted two more interviews and ceased data collection. Lincoln and Guba (1985) have noted that in a qualitative research study, the interviewer will eventually reach the point of saturation. This is the point of diminishing returns; additional interviews were not revealing any new data. Ultimately, the sample consisted of 14 Black participants and 10 White participants. The Black and White participants are detailed in tables 3.1 and 3.2, respectively.

Of the fourteen Black attorneys who participated in the study, eight were engaged in law practices which included criminal law. While an attempt was made to locate a diverse group of participants, I believe that the study sample is representative of one of the problems which was identified in this study: Black attorneys are excluded from many practice specialty areas in the practice of law in Georgia; many are forced to default to criminal practice because clientele in the Black community are readily available, and there are fewer barriers to starting a criminal practice.

Data Collection

In qualitative research, several methodologies are available for data collection. According to Bogdan & Biklen (1992), data collection methods include interviews, participant observation, and field notes. The primary method of data collection for this research study was

interviews. However, data was also collected through researcher field notes and observations of participants during the interview process.

Table 3.1

Black Participants

Pseudonym	Primary Area(s) of Practice	Estimated Years of Experience
Robert	Federal Prosecutor/ U.S. Attorney Office	10 years
Victor	Private Practice (general)	12 years
Larry	Law Firm Partner (civil practice)	15 years
Sherry	County District Attorney	8 years
Donald	Labor and Employment Law Firm	20 years
Brenda	Private Practice (general)	15 years
Ted	Labor and Employment Law Firm	8 years
Adrienne	Criminal Juvenile Defense	27 years
Carol	Corporate and Commercial Transaction Law and Construction Law	19 years
Clarence	State Attorney/Elections Law	5 years
Karen	Criminal Prosecution	12 years
Alan	Criminal Defense and Personal Injury	12 years
Linda	Juvenile Defense	2 years
William	Employment Law, Criminal Law and Personal Injury	10 years

Table 3.2

White Participants

Pseudonym	Primary Area(s) of Practice	Estimated Years of Practice
James	Civil Practice including bankruptcy and divorce	24 years
Patrick	Family and domestic law	31 years
Donna	Civil practice including employment and family law	24 years
Elizabeth	Employment and civil rights law and indigent criminal defense	18 years
Janice	Criminal defense	9 years
Dave	Criminal defense	15 years
Paul	Civil practice (plaintiff's practice)	6 years
Sean	Civil practiced including family law	22 years
Rose	Civil practice including family law	22 years
Kevin	Employment law	30 years

In qualitative research, many types of interviews can be used to gather data. These interview types range from a highly structured format in which predetermined and pointed questions are asked of each of the research participants, to a conversational format in which free-ranging conversation is desired. In this research study, I employed a semi-structured interview approach. Each interview was initiated by asking all participants to give information about their area(s) of practice expertise. This was followed by interview questions designed to solicit information about the participants' experience with race in their individual practices as well as

their perception regarding the impact of race on the profession as a whole. Because I was working under a limited time frame, the questions did “lead” the interviewees to focus on topics related to race and its nexus to the practice of law in Georgia. My data collection plan was to conduct in-depth semi-structured interviews with each of the participating attorneys around the issues presented in the research questions. In order to do this, I developed an interview script to be used as a general guide in conducting the interviews (see appendix B). The same interview script was used for both the pilot and the present study. My overall data collection plan was complicated by a factor that has become increasingly important among researchers who conduct interviews across different racial groups: the impact of cross-racial interviewing.

Cross-Racial Interviewing. The literature on race-of-interviewer effects indicates that White respondents and Black respondents are both susceptible to race-of-interviewer effects. Hatchett and Schuman (1975) noted that in cross-racial interviewing the process for both races seems to be one of avoiding responses that might offend the interviewer of the opposing race, and of being frank (or at least franker) with interviewers of one’s own race. Schaeffer (1980) found that the race-of-interviewer effects were large enough to justify the practice of matching interviewer and respondent race for interviews on racial topics. Livert, et. al. (1998), found that Blacks and Hispanics who were interviewed by Whites were less likely to report illegal substance use and more likely to report disapproval and perceived harm from such use. In other words, they were more likely to give socially desirable responses when the race of the interviewer was different from their own. Cotter, Cohen, & Coulter (1982)) found that interviewer effects attributable to the perceived race of the interviewer can even be observed over the telephone. They found that White respondents exhibited less prejudice toward Blacks if they believed that they were speaking to a Black interviewer and that White interviewers elicited

a wider variety of responses, representing the broad range of attitudes which are held toward Blacks in the White population. Therefore, in order to protect the integrity of the study and to control for the race-of-interviewer effect, I decided that it was necessary to make all interviews “same race” interviews. Thus, I solicited the assistance of a fellow graduate student during the data collection phase; this fellow student conducted all of the White interviews.

This student who assisted with data collection was a White female who was also a doctoral candidate in the Adult Education Program at the University of Georgia. This fellow student had already collected the data needed for her dissertation which utilized a qualitative methodology and had participated in other qualitative research studies with faculty members in the department; she was respected as a thorough and experienced qualitative researcher. Nevertheless, the use of an additional interviewer in the data collection process raised the important issue of interviewer consistency.

Interviewer Consistency. I designed steps to insure consistency in the interviews for the Black and White participants. I conducted the first set of interviews and then met with the assisting interviewer and discussed the broad approach with her. During this meeting, I informed the assisting interviewer of the purpose of the research. I gave her an interview script and reviewed each question on the script informing her of the purpose of each question. I played excerpts from the tapes of the first interviews that I had already conducted with Black participants so that she would get a feel for how the questions were to be asked and the probes that might be appropriate for each of the questions on the script. She asked questions throughout this meeting. She then developed possible “probes” for each of the questions based on our discussion. At her request, I reviewed the “probes” and provided her feedback as to their appropriateness. After conducting her first interview, the transcript was transcribed and

reviewed by me in order to make sure that the format and data yield were meeting the research design purpose. Additionally, the assisting interviewer recorded field observations on each interview tape in an effort to preserve as much data surrounding each of the White interviews as possible. These observations were used as data in this study.

All of the interviews were recorded with each research participant's permission. The consent form that the participants were required to sign is included in Appendix C. It was interesting to note that frequently the participants would initiate dialogue with the interviewer after the tape was turned off, indicating that they felt more comfortable discussing race issues when they were not being recorded. This happened most often with the White participants. In such cases, the recorded field notes of the interviewer were invaluable.

Indeed, my experiences in conducting the interviews with the Black attorneys supported the decision to conduct same race interviews only. A number of the Black attorneys assumed a "familiar" air with me even though I did not personally know them. Very frequently, I would have to probe the Black respondents to get them to explain or speak further about race issues that they assumed that I inherently understood because I, like them, was a Black attorney and understood, for example, that their failure to get the job offer after interviewing with a prestigious law firm was the result of racism. Similarly, the White "participants" were "familiar" with the co-researcher and spoke candidly in most cases about the issue of race. However, the assisting interviewer did note that the White participants tended to not look her directly in the eye when speaking about race. It was almost as if they were embarrassed. In contrast, the Black participants looked me directly in the eyes throughout the interviewing process and were eager to discuss the impact of race on the profession.

Data Analysis

Each of the interview tapes was professionally transcribed. I then uploaded each of the transcripts into NVivo Qualitative Software and used the software's coding features to assist me in coding each of the transcripts. This software program was invaluable as a data management tool; it was used for the development, coding, and refining of themes derived from the data. I approached data analysis by first reading each transcript several times until I began to recognize emerging themes. I listened to the audio tapes of the interviews as necessary during data analysis in order to clarify confusing statements on the transcripts and to determine the nature of the feelings behind the transcribed data (e.g., to determine whether or not statements were accompanied by passion or anger). The first reading and coding of each transcript resulted in an excess of 100 emerging themes for both the White and Black interviewees. Following the initial coding, I engaged in a recoding iteration process in which I grouped similar areas together. I continued this process until I was convinced that the remaining 4 or 5 themes adequately represented the data. This process was used to arrive at the themes for research questions one and two. Because of the limited scope and pragmatic nature of research questions 3 and 4, the resulting data did not yield the rich thick descriptions that warrant the derivation of themes. Therefore, I decided to summarize the data findings for these two questions in an essay format.

I was engaged in data analysis throughout the data collection process. In qualitative research, the researcher is engaged as the main source for gathering data in an inductive process that seeks to determine meaning and understanding of phenomenon (Merriam, 1998; Patton, 1990). According to Merriam (1998), data analysis is the comprehensive and systematic process of organizing, arranging and synthesizing the data collected in the field in order to gain an understanding from the research. In qualitative research methodology, this process of data

analysis starts when the researcher begins the process of data collection and continues throughout the entire process of data collection (Goetz & LeCompte, 1993). Throughout the interviewing process, I constantly analyzed the data for the Black participants as I progressed with data collection. I could not start the data analysis for the White participants until I received the interview tapes and transcripts from my assisting interviewer and professional transcriber; however, after each of the White participant's interviews, my assisting interviewer would brief me by giving me an overview of the interview and noting anything she felt was unique about the interview session. I made notes of these debriefings and used this data in my analysis.

Researchers can use many different methods in analyzing qualitative research data. These methods include analytical induction, constant comparison, and enumeration (Bogdan & Biklen, 1992; Goetz & LeCompte, 1984; Maykut & Morehouse, 1999; Merriam, 1998). The constant comparison method of data analysis was utilized in this study because this method is conducive to qualitative research where an inductive approach to the data analysis is preferred. According to the Maykut & Morehouse (1999), the inductive approach to data analysis stipulates that "the data are not grouped according to predetermined categories. Rather what becomes important to analyze emerges from the data itself, out of a process of inductive reasoning" (p. 127). Unlike quantitative research where the predetermined variables drive the data collection process, in qualitative research important variables emerge as the collection and analysis of data progresses. Therefore, the constant comparative method is the most appropriate approach to use in analyzing qualitative data (Bogdan & Biklen, 1992; Glaser & Strauss, 1967; Lincoln & Guba, 1985; Merriam, 1998; Patton, 1990). Additionally, the constant comparative method is an appropriate qualitative methodology for researchers like me who have little or no experience in research. Maykut & Morehouse have argued that the constant comparative method facilitates

greater management of the data by the inexperienced researcher. As was discussed above, throughout the data analysis process, I constantly compared pieces of data to help generate categories. Additionally, as I encountered data that I thought might be relevant to the study, I asked myself, “What is this piece of data an example of?” Through this process of comparison and inquiry using the aforementioned question I arrived at broad categories that were refined as I continued through several iterations of the process.

The data was analyzed through a critical race theory lens as discussed above; major themes were determined. Punch (1998) has noted that unlike quantitative research in which comparison is inherent in the statistical analysis techniques, in qualitative analysis it is not so automatic, and as such, should be stressed. Comparing is essential in identifying abstract concepts and in coding. At the first level of coding, it is by comparing different indicators in the data that we arrive at the more abstract concepts behind the empirical data. Thus, it is comparison which leads to raising the level of conceptual development. The same is true for coding at a higher level. Comparing concepts and their properties at a first level of abstraction enables a researcher to identify more abstract concepts. The systematic and constant making of comparisons is, therefore, considered essential to conceptual development at all levels in the analysis of qualitative data. Tesch (1990) in her comprehensive survey of methods used in qualitative data analysis, sees comparison as the central intellectual activity in analysis. Glaser and Strauss (1967), co-founders of grounded theory, saw comparison as so important that they described grounded theory analysis as the “Constant comparative method.”

CHAPTER 4

FINDINGS

The purpose of this chapter is to present the findings of the study. The findings are organized according to the four research questions which were presented in Chapter 3. As was discussed in Chapter 3, sub-themes related to research questions one and two emerged through rigorous comparison of the data. The salient themes that emerged relative to research questions 1 and 2 will be summarized and discussed in the following two sections. The findings related to research questions 3 and 4 will be presented at the end of this chapter.

Findings Related to Research Question 1: How do White attorneys view the role of race in the legal system?

The White attorneys attempted to distance themselves from “those” White people who are racist and “those” in the profession who perpetuate the obvious racial injustices that are discussed in the following data. For example, after the tape recorder was turned off, Donna talked about a “good ‘ole boy” that she had as a client who had used inappropriate race words; however, she did not challenge him because in situations like that she keeps “her lips zipped” and doesn’t say anything because “you can’t change them.” Similarly, after the tape was turned off, Elizabeth lamented to the interviewer that she struggled with the issue of race and did not “feel like she was doing enough to help the system change.” Elizabeth felt the need to let the interviewer know that she was racially conscious and did try to do things to a make a difference albeit in her eyes they were not enough.

Another observation the assisting interviewer consistently made about the White interview participants is that they almost never looked her in the eyes when specifically talking

about the issue of race. Most of the White interviewees made direct eye contact with the interviewer while engaged in discourse about issues such as CLE and when asked to describe aspects of their practice. However, when race was addressed, the White interviewees tended to look away from the interviewer. Several of the interviewees confided after the tape was turned off that they found race to be a very difficult topic to discuss. Paul exclaimed after the tape was turned off, “This is a very difficult topic to talk about.” This discomfort experienced by Paul was shared by many of the White participants.

In analyzing the data in response to research question 1, four distinct themes emerged. These themes were common threads throughout the interviews with the White participants. These four themes are summarized in table 4.1 below and are discussed in detail in the following section.

Table 4.1
Themes related to research question 1

Theme 1: Racial inequality is pervasive in the legal system

Theme 2: Race influences sentencing and affects the nature of interaction between the judiciary and Black attorneys

Theme 3: Black attorneys are victims of race-based exclusion at all levels in the profession

Theme 4: Black attorneys must locate their practices near Black clientele and near a diverse judiciary

Theme 1: Racial Inequality is Pervasive in the Legal System

The recognition of the pervasiveness of racial inequality in the legal system seemed to emerge clearly from the interviews. Almost all of the White interview participants talked about the connection between race and the legal system; some talked about experiences that they had,

and others discussed it from what they observed from the racial makeup of the criminal courtroom and prisons. From their experiences and observations, the participants concluded that, somehow, there is a connection between the race of a would-be defendant and the probability that he or she will be become involved in the legal system. The participants expressed an awareness of inherent bias throughout the legal system. This inherent bias manifested itself in the criminal justice system, in civil cases, and in jury behavior. The overarching observation made by the White attorneys in support of this theme was the assertion that Black men are targeted by the criminal justice system.

It was evident to the White attorneys that something was awry in the criminal justice system; they expressed concern about the fact that there were more Black men in prison than men from any other ethnic group in our society. Each of the White participants acknowledged a racial disparity in the criminal justice system even though most could not or did expressly name the cause as blatant racism. James, a White attorney, who has been in practice since 1979 dealing primarily with civil issues such as bankruptcy, disability claims, and divorces explained that he thought that the criminal justice system was biased:

I don't think there is any question that there is a certain bias built into the criminal system that young minorities are the ones that get caught with drugs and they are the ones who get jail time where you and I would probably get probation for the same type of offense. And I think a lot of judges that really don't like to put people on disability, which they see is essentially long term, if they figure they are just sorry and won't get a job.

James was specifically referring to his Black clients in disability cases; he believed judges treated them differently because they were Black, and the judges embraced the stereotype that Blacks were lazy, and therefore, undeserving of disability. James seemed to have the overall perception that the criminal justice system was inherently biased against Black defendants. James even believed that Black plaintiffs were treated differently in civil cases. He expressed concern that very frequently Black plaintiffs receive adverse verdicts in civil cases solely because of their race:

I don't think there's any doubt in my mind, again, a young unemployed Black youth going in front of a jury over a car accident case is less likely that he going to statistically get the same verdict of somebody who is same age, White middle class and working.

Similar to the belief expressed by James, some of the White participants maintained that they thought that the criminal justice system targeted young Black men. The fact that they were targeted by the system explained why young Black men were over-represented in the criminal justice system. The thinking among many of the participants was that our society created an environment that entraps and engages young Black men. Black men, according to the participants, fall prey to an unavoidable spiral. Because of their socio-economic status in our society, many young Black men will ultimately get involved in activities that society deems to be criminal, and thus, be brought into the criminal justice system. Many examples were given by the participants in support of their contention that the system was inherently biased against Blacks and that it especially targeted young Black men. These examples and scenarios in which Black men are targeted and discriminated against included (a) child support cases, (b) probation administration in the courts, (c) racial profiling, and (d) jury conduct.

Child Support Cases. The participants expressly noted that the recent publicity surrounding Black men as deadbeats who fail to pay child support perpetuates a myth; the fact is that Black men have the highest unemployment rate in our society and are among the least educated. It is problematic that young Black men who are unemployed and uneducated are prosecuted for child support when it is obvious that they lack the resources to meet child support demands. Simply put, because Black men have the highest unemployment rate and are less educated than all other groups in our society, they lack the resources to pay child support.

Probation Administration in the Courts. Similarly, when Black men are placed on probation, as they frequently are in the criminal justice system, they are required to come forward with resources that they frequently do not have. Dave argued that “if you are on probation and you are required to do community service and you don’t have a car...forty dollars a week is hard for you.” The probation system requires that participants pay a specified sum of money each week to their probation officers and that they do community service often at places that they cannot access via public transportation. Given that very frequently these young Black men are unemployed, it is unreasonable that they would be required to pay money and travel to places that require financial resources to access. Many of the participants saw such occurrences in the criminal justice system as a purposeful design that served to ensure that Black men remain in the same socio-economic status and remain a predominant presence in jails and prisons.

Racial Profiling. Many of the White participants noted that racial profiling is an ongoing problem in the criminal justice system. Some of them spoke of the issue as if it were “hearsay”; that is, they spoke about the issue based on what they had heard from others, particularly colleagues of color. Most of these attorneys had never represented clients that they suspected had been victims of racial profiling or for whom the issue was squarely raised. However, several

of the White attorneys did speak first hand about cases they had handled in which they knew that racial profiling was the issue, but in almost every case, the issue was not raised in court. Janice, a White female who has been in a criminal defense practice ever since her graduation from law school in 1994, gave a good example of racial profiling:

A cop pulled our client over for not stopping all the way at a stop sign, like just a rolling stop. And again, it's a young Black man, late at night, predominantly Black neighborhood, I mean, it's something that nobody would have gotten stopped for if you weren't in that neighborhood . . . I mean . . . racial discrimination by police is obviously very predominant.

Janice's statement is a recognition of racial profiling as a continuing problem in the criminal justice system and that police selectively enforce laws depending on the color of the perpetrator. Janice also noted that "there is a disproportionate amount of African-Americans who get charged with crime." To her it was obvious that there was something wrong with the system because the criminal courtroom was predominantly filled with Black men.

Jury Conduct. The issue of jury nullification was raised as yet another example of situations in which race impacts the criminal justice system. Jury nullification occurs when there is sufficient evidence for the jury to find a defendant guilty of the crime as charged, but the jury, nonetheless, votes to acquit the defendant. Typically, the motivation for this jury act of defiance is vindication of the past wrong of racial discrimination in the criminal justice system. For example, many legal scholars believe that jury nullification is the explanation for what happened in O.J. Simpson's criminal case. Many believe that the overwhelming evidence in O.J. Simpson's case points to conviction but that the jury looked for reasons not to convict in order to win one against an oppressive system, or to vindicate for past wrongs. Patrick argued that:

. . . there is a bias and it exists, there is no question, it exists when White juries acquit Whites in White on Black crimes, it exists when Black juries won't convict a Black man for a Black on White crime and that's just out there.

Patrick's comment is an acknowledgement of the importance of race in the criminal justice system and a rejection of the assertion that the criminal justice system is colorblind. Patrick believed that jury nullification was a common occurrence in the system; therefore, he contended that race was a significant factor in jury decisions. Patrick's statement did not include the criminal scenario that accounts for a significant percentage of crime: Black on Black crime. Maybe, he believed that race does not play a part in such cases and that White jurors would be more objective in such cases. Such a belief or assumption would be baseless since racial biases and stereotypes could also play a part in jury verdicts in which both defendant and victim were Black.

In addition to jury nullification, the issue of race consideration in jury selection was also discussed as an example of how race continues to permeate the criminal justice system. Sean, a White attorney who has been in a civil practice (family law) for the past 22 years, gave the best example of how he used the reality of the importance of race in jury selection. He stated:

. . . a young Black man in a criminal cases, I will never put any Black women or men over the age of fifty on the jury if I can help it because their perceptual reality is that all those young Black men are guilty.

Sean believed this to be true even in cases involving Black on Black crime. Sean's statement is a recognition of Black self-hatred and internalized racism. In other words, it appears as if Blacks have become instruments of their own oppression in the criminal justice system.

Many of the White attorney participants talked about the visual reality of racial disparity in the courtroom. This visual reality made it hard to deny the presence and effect of race on the issues that were discussed above. Some noted that every time they walk into a criminal courtroom they are reminded of the reality of race. Paul, a White male participant who has a civil practice with an Athens area law firm noted:

I had been in arraignments in a criminal case, and the lawyer commented offhand not knowing about you coming today to see me, he said how much a shame it was that everyone there for the arraignments was Black. And I know that the statistics are pretty staggering on that stuff . . . with the inmates in our correctional facilities being African-American.

The White attorney participants seemed to agree that there is something wrong in the criminal justice system which maintains a predominant Black presence by targeting young Black men and engaging them in a criminal justice system that they cannot escape because of their socio-economic plight in society.

Theme 2: Race Influences Sentencing and Affects the Nature of Interaction Between the Judiciary and Black Attorneys

The belief that race influences sentencing and affects the nature of interaction between the judiciary and defendants was discussed by a number of the participants in relationship to their interaction with the judiciary and the outcome of cases in which they were involved. The participants indicated that the impact of race on the judiciary has manifested itself in the following ways: (a) judges act on racial stereotypes and biases, (b) judges have an inability to relate to defendants of color, and (c) race impacts the litigation strategy of White attorneys.

Judges act on stereotypes and racial biases. It was evident to many of the participants that judges acted on stereotypes about young Black men and tended to treat them harsher in

sentencing and be demeaning and condescending in interacting with Black defendants. For example, judges are apparently less likely to award benefits to petitioners who have been on welfare. James noted that “some administrative judges have a very difficult time granting anybody who has ever been on welfare disability.” This is because most judges assume that welfare petitioners are “just sorry and won’t get a job”. Implicit in this assumption is that the vast majority of welfare petitioners are Black; although, this is not statistically true, the perception is that most recipients are Black. Many of the participants agreed that judges have real racial biases and that they often cannot divorce such biases from their decision-making. James gave a powerful example of this reality when he told the story of an inter-racial divorce case in which he was involved:

. . . a judge told me one time when my client was White and wife was Black and it was just us alone, the judge told me the next time he saw me, “I almost didn’t grant that divorce.”

The judge was inclined not to grant the divorce because he objected to the inter-racial relationship. Interestingly, James was not shocked by this reaction. James had already revealed that he was “sure the judges are just as bigoted as can be” based on his own personal and professional experiences in the courtroom.

Judges have an inability to relate to defendants of color. The White attorneys were not hopeful about the possibility of bridging the divide between Black defendants and the judiciary because, according to them, White judges cannot relate to defendants of color; especially, young Black male defendants. It was generally agreed among the White participants that very frequently White judges cannot relate to defendants of color and that this has a definite impact on sentencing outcomes. James noted that arguing disability cases for plaintiffs of color is

particularly challenging because “the White middle class judge and even worse, a White middle class judge that has never practiced law in the classic sense . . . had to deal with real people” cannot relate to people of color. This is a problematic finding because the reality is that judges must be able to relate to defendants in order to render fair and just sentences. In the absence of experiences that allow them to relate to people of other races who come before them for sentencing or civil decisions, judges rely on stereotypes.

This inability to relate on the part of judges can also be an intra-racial occurrence. Apparently, it frequently happens that Black judges cannot relate to Black defendants or buy into stereotypes about Black defendants, particularly Black males, and render decisions with those stereotypes in mind. Dave noted that decisions based on stereotypes come from Black judges as well as White judges:

I have seen Black prosecutors be very discriminatory and a couple of Black judges be very hard on my Black clients. And I feel that they are less tolerant because they came from the same background and they got out . . . the Black judges and lawyers and cops have very little tolerance so I think definitely race comes into play from Black to Black.

Thus, the inability to relate from judges to defendants transcends racial boundaries and also includes socio-economic variables. This combined with internalized racial stereotypes becomes a deadly formula for Black defendants when they go before Black judges. The end result, according to the White participants, is that Black defendants receive harsher treatment.

Race impacts the litigation strategy of White attorneys. Race can also be a primary influence on an attorney’s litigation strategy. White attorneys are reluctant to raise the issue of race in a case or to address the issue of racial profiling in open court. Many attorneys apparently

feel race is such a divisive word that to mention it in open court would unnecessarily invoke the wrath of the judge and may be prejudicial against Black clients. Donna, a White female participant, clearly summarized this issue:

I think that . . . the pendulum has swung so far . . . I don't won't to use a . . . negative term but the pendulum has swung so far from the early days when courts were very willing to entertain civil rights types of claims and some of the great civil rights cases of the time. And the pendulum has swung very far in the opposite direction such that it has become very difficult and extremely challenging to take the cases to court. You take the cases to court and you litigate on them for ages and only to take it to court and have the judge rule against you every step of the way. Judges are just . . . they have become quite hostile.

Several of the White attorneys talked about cases in which they knew that race was a primary issue. However, as is often the case, they did not know how to raise the issue. Therefore, they did what most attorneys apparently do, they did not address the issue. For example, James declined to raise the issue because he did not want to “scare” off the judge:

I was like, look, we need to play this video tape for the judge where he sees like three Black men getting thrown on the hood of a car and being like basically stripped searched in front of the video. We need to show the judge that to point out what time it was, what neighborhood it was and point these things out and kind of go around that issue so that the judge can see what's going on. But if I go in

there and I'm like "This cop is a racist", it is going to completely scare off the judge and he's not going like it.

This unwillingness on the part of White attorneys to address race and the seemingly negative judicial reaction towards the issue of race serves only to maintain the status quo.

Theme 3: Black Attorneys are Victims of Race Based Exclusion at All Levels in the Profession

The theme of exclusion at all levels within the profession surfaced among the White attorney participants in the following contexts: (a) The need for affirmative action in law school admission policies, (b) The need for diversity at the local and state bar levels, (c) The Exclusion of Blacks from the bar leadership, (d) The invisibility of Blacks in the profession, (e) The absence of Blacks on the Bench, (f) The problem of discrimination among law firms, and (g) The exclusion of Blacks from specialty practice areas. Some of the participants indicated that law schools did not admit enough Black students and that law schools need to engage in aggressive and innovative admission policies in order to change this reality because the diversity issue in the profession starts there. Secondly, many of the participants discussed the absence of Black judges in the jurisdictions in which they practiced. They saw this as problematic since most of the defendants who go before these judges are young Black men. The participants lamented: how can fair and just decisions be rendered by a White judge for a Black defendant when the White judge cannot relate?

Also, many of the participants expressed the need for increased diversity among members of the bar. Based on their interaction, they observed that the opportunities to interact with Black attorneys were few and limited primarily because (based on their perception) there were too few Black attorneys, and lastly, the various practice areas of specialty need to embrace diversity and increase the number of Black practitioners. Some discussed the need for increased diversity as a

method to increase racial sensitivity among the bar and judiciary. Many of the White attorneys talked extensively about the obvious discriminatory practices of many large law firms; these attorneys asserted that the absence of Black attorneys in these firms was by design and not by happenstance.

The majority of the White attorneys felt that by increasing diversity, there would be a subsequent increase in the interaction among the different races. It was hoped that this increased interaction would lead to racial harmony within the profession and would serve to help eliminate the use of racial stereotypes in judicial decision-making.

The need for affirmative action in law school admission policies. Several of the White attorneys felt that the diversity initiative should start with recruitment for law school. Elizabeth, noted that “in law school there are not that many minorities still who are enrolled, although the numbers evidently have been increasing and that’s really good.” Carol expressed support for Elizabeth’s observation when she recalled her law school years and noted that “by the time I was third year there weren’t many, actually ten maybe, Black students plus there were barely any women”. The observation that diversity is needed in law schools is noteworthy because although overall Black enrollment in law schools has increased significantly in the past 20 years, the increase has apparently not been significant enough to affect the perception of some White attorneys. Or many White attorneys still attend law schools in which Black representation is minimal at best; in any event, this observation speaks to the need for an overall increase in affirmative action programs for law school admissions.

The need for diversity at the local and State Bar levels. Some of the White attorney participants addressed the need for diversity at both the local and state bar levels. Some noted

that they had rarely seen Blacks at local bar meetings. While arguably, there has been progress over the past ten years, there is still a need for gains in this area. Patrick noted that

We've never had a Black president or Black chair in the family law section. So it's a fact in my area of practice, in my section of the bar . . . the Black lawyers are . . . I mean, they are invisible . . . women
On the other hand, have taken over, you know . . .

While there have been increases in the number of Black attorneys over the past 20 years, from the perspective of many of the White participants, those increases have not been significant and have not resulted in increased Black participation at the leadership level in the state bar.

Similarly, several participants talked about the noticeable absence of Black attorneys at their local bar meetings. Particularly, in the Athens area, it was observed that there was almost no Black presence in the local bar meetings. Patrick expressed frustration that his section of the bar had not been successful in attracting Black attorneys. He said that his section "wanted to make a concerted effort to try and diversify our body more and make a concerted effort to get more African American lawyers into our program" but to no avail. Black attorneys often choose to interact with other Black attorneys; for example, Atlanta is home to the Gate City Bar Association, which is a voluntary Bar Association of Black attorneys. Many Black attorneys are active in the Gate City Bar Association and make no effort to participate in the leadership of the Georgia Bar Association of which all practicing attorneys in Georgia are required to be members.

Patrick was proud of his efforts on the Athens bar when he single-handedly tried to diversify the leadership but noted that since his attempt nothing significant seems to have happened:

I was chair of that section in '91 and . . . the chair can appoint a couple of adhoc members to the adhoc positions on the board and I appointed a Black woman and I'm certainly not a trailblazer but that was the first time that was done and I can't tell you a Black person that has been on there since.

Several of the White attorneys expressed concern that there are separate bar associations for White and Black members. They could not explain the absence of Blacks from the bar, especially at the leadership level. As a matter of fact, the White attorneys seem to believe that Black attorneys engage in self-segregation from the mainstream leadership of the bar out of choice. They seem not to recognize that exclusion from mainstream participation has forced Black attorneys to seek other avenues, such as the Gate City Bar Association, so that they can have a voice in the profession in the state of Georgia. Patrick discussed the issue at greatest length and noted that "I do not know the answer. In my mind it is certainly not active exclusion. People don't sit around, 'Well, who is going to be the next chair of this?'" Patrick seemed almost ambivalent about the cause of the exclusion of Black attorneys from Bar leadership. He stated:

And I don't know . . . you know, on the one hand I don't think that the Academy of Matrimony Lawyers are trying to keep Blacks out. On the other hand, they don't appear to be busting their butts to get Blacks in there. And they are not in leadership positions . . .

Patrick attributed the selection of attorneys to positions of leadership in the bar as an open and fair process. He assumed that opportunities for leadership were available to all members of the bar who were interested. However, he could not offer a viable explanation for the exclusion of

Black attorneys from positions of leadership. He could not understand that Black attorneys knew that active participation at the leadership level was limited because of their race. As such, Black attorneys view programs designed to reach out to the Black membership and increase Black participation as an effort to garner the necessary token participation for the appearance of diversity.

Even where the local bar leadership was able to increase the total numbers participating in local meetings, they were unable to significantly increase Black participation. Sean lamented that “we increased the folks coming but we were still not getting any Black lawyers. Generally , if you came to a bar meeting, you would probably see . . . two Black people there.” Black attorneys in Georgia have no presence in the State Bar Association and seem to be unresponsive to the efforts of the bar to change this reality. Elizabeth reflected on futile efforts that the bar had made to attract Black attorneys:

and I know that overtures have been made, I know that because the person who is president of the bar association this last go round, I know made personal contacts and invitations to say “Y’all please come” but people (Black) don’t come for a variety of reasons.

The exclusion of Blacks from the bar leadership. Many of the White research participants talked about the noticeable absence of Blacks from leadership and executive positions within the bar. Several talked about the efforts of the bar to attract more Black attorneys to bar leadership and executive positions. It was generally acknowledged that the absence of Black attorneys had its genesis in the segregated tradition of the south but that the bar had undertaken recent efforts to change this disparity but to no avail.

The invisibility of Blacks in the profession. Some of the research participants discussed the diversity issue from the perspective of visibility by Black attorneys in the circles in which they practiced law. Most noted that Black attorneys were scarce in the courtrooms in which they practiced and that the colleagues with whom they interacted day in and day out were primarily White. Sean noted that “you have got maybe a 150 to 200 practicing lawyers in the community so five or ten percent are Black.” Sean observed that the Athens area community of attorneys with whom he interacted had very little Black representation. It was interesting to observe that Sean did not attribute the absence of a Black presence in the profession to exclusion on the part of White attorneys. He seemed to assume that the absence was the choice of Black attorneys; further, he assumed that the reason that the number of Black attorneys entering the field was not higher was because not enough Black men and women were choosing law as a profession. His response seems to be oblivious to the exclusionary effect of racial oppression; even more basic, his response seems to not recognize the existence of racial oppression.

The absence of Blacks on the bench. Many of the White research participants discussed the diversity issue by noting the absence of Black judges on the bench. These participants found it problematic that the number of Black judges is so few while the greater majority of criminal defendants is Black. Almost all of the Athens area White attorneys noted this problem. James asserted, “You’ve got to look at the judges, we had one minority in the past, but the last few years the judges are all White, they are all maybe forty-five to sixty years old.”

Several of the White participants noted the age of the judges to further support the contention that White judges do not have the capacity to relate to young Black male defendants. Sean responded that “judges tended to be older, so not only were they White but they were a White man in their fifties and sixties.” Elizabeth noted that:

On the 11th Circuit Court of Appeals, there's only one African American judge out of twelve maybe. I think that's right. It's Judge Wilson and I don't think there are any more African Americans, no Hispanics.

This means that young Black males in the 11th circuit are at a disadvantage when they appear before a judge because the judges can not and do not understand them; again, they lack the capacity to relate to young Black men.

The problem of discrimination among law firms. The issue of diversity was also raised by a number of the participants in relationship to the number of Black attorneys hired by large and well known law firms. There seemed to be a consensus that the large law firms discriminated or somehow excluded Black attorneys from their rank. The participants drew this conclusion from their observation that there were almost no Black attorneys in the large and prestigious law firms and that this could not have happened by chance. Elizabeth noted that the firms need to start "doing a better job of trying to recruit and consider qualified minorities in the applicant pool in the first place." James was more upfront in his observation that "I mean, there aren't a lot of minority Blacks in big law firms."

Similarly, Janice was passionate in her concern for the need for increased diversity. She wanted to see the bar take immediate action to address the problem; she wanted to see:

One or two seminars where they are starting to do that by even acknowledging like look, this is an issue that concerns us, like we would like to see more diversity in the profession and we'd like to encourage diversity in the profession.

The White attorneys seemed to agree that it was important that the bar get this message out to its membership. They agreed that the bar needed to welcome Black attorneys. Janice

recommended that the bar engage in an aggressive mentoring program in order to reach this goal of diversity. She also thought that this would be an effective means to increase diversity:

. . . probably maybe mentoring. I mean, maybe that would be a way that they could try to . . . encourage young minorities to enter the profession and try to retain them, keep them from becoming disillusioned and leaving the profession.

The thinking is that upon entering the profession, young Black attorneys are often surprised at the racism that they encounter in not only the criminal justice system but also in the profession, and very frequently opt to leave the profession out of frustration. She thought that mentoring might work to prevent disillusionment.

The exclusion of Blacks from specialty practice areas. Several of the White attorney research participants addressed exclusion in the profession from the perspective of representation in the various specialty areas of legal practice. These participants noted that Black attorneys seem to be excluded from a number of specialty areas in the practice. They attributed this exclusion to the race of the attorney. In most cases, these specialty areas have historically been the highly lucrative practice areas in the profession. Patrick noted:

I do handle some ISF cases and it is hard to crack into that area.

You get a couple of rich people kind of blunder into see you but it's hard to break into that. And I can't say a single Black lawyer that have broken into that.

Patrick also noted that he did not see Black attorneys getting asset cases:

. . . if your client has got good assets and they have friends with good assets, you get sent that. If you have got a good reputation with other

lawyers and sometimes . . . or somebody says “give me the names of some lawyers and these are the people that I know and that I like” and my list rarely includes a Black lawyer. Shame on me. If they send me business, I’ll send them business.

Thus, in order to break into such specialty areas, attorneys need to be involved in active networking. This is extremely problematic for Black attorneys because very often they are excluded from mainstream networks, and as a result, find it almost impossible to break into some areas of legal practice and foster the clientele necessary to be successful. This finding is consistent with some of the frustration expressed by Black attorney research participants. Several of the Black participants lamented about the difficulty of breaking into the lucrative areas of legal practice. One of the Black participants discussed at length the difficulty of breaking into a specialized corporate practice even though she was highly qualified educationally, having earned not only a Doctor of Jurisprudence from Emory University but also an MBA and her Georgia CPA certification.. This finding indicates that the Good Ol’ Boy network in Georgia for legal practice is alive and well and that it serves to protect certain legal specialties for its designated members. These members are typically White and male.

Theme 4: Black Attorneys Must Locate their Practices Near Black Clientele and Near a Diverse Judiciary

Black attorneys are forced to locate their practices near supportive, predominantly Black, communities in order to build successful practices. The White participants addressed the importance of practice location in the following contexts: (a) The importance of location in determining the level of success for Black attorneys, (b) the nexus between race and a client’s choice of attorney, and (c) the significance of a diverse bench. White clients seek out White attorneys and Black clients seek out Black attorneys in most cases; even though, the Black

participants' data does suggest that some Black clients seek White attorneys because they frequently question the competency of Black attorneys. Even so, Black attorneys have been ghettoized in the practice; they can only represent a "certain" segment of the Black population. This ghettoization helps to maintain the racial polarization currently present in the profession. Further, Black attorneys tend to shy away from predominately White areas of the state in order to avoid the stress of a discriminatory and biased judiciary; Black attorneys prefer to practice in diverse locations where racial tolerance can be expected.

The importance of location in determining the level of success for Black attorneys. Many of the White participants spoke of the connection between race and practice locality; these participants said that they knew of Black colleagues who had tried to create a thriving practice in predominately White areas but either abandoned their efforts after paddling upstream and struggling to get started or simply abandoned such efforts because of frustration from racism. Almost all of the White participants recognized that it seemed to be easier for Black attorneys to survive in the metropolitan Atlanta area as opposed to outlying suburban areas or predominately White areas. For example, Janice noted that it had been her experience that Black attorneys in the Athens area had a hard time building a successful practice; she attributed this difficulty to race:

Atlanta is different . . . I think it does have a larger population of Black professionals and a lot of times young Black attorneys who come here go to Atlanta because they are not, after a few years, they are not happy practicing here.

Black attorneys in communities where there are few Black attorneys to interact with apparently feel alienated from the profession and have a difficult time becoming stitched-in to the

profession. The overall racial climate of the state affects Black attorneys' perception of the inclusiveness of the profession in a given locale; the result is that many Black attorneys practicing outside Atlanta make efforts to locate closer to the city of Atlanta or continue to struggle with the issue of race both within the profession and society as a whole. Janice spoke directly to this issue:

They don't have maybe a group of young Black professionals that they can bond with and they do probably, I think that . . . people I have talked to have said, "I want to move to Atlanta, I don't want to raise kids in Athens," and so there is probably, I think, something there in a sense of maybe Black populations are treated in school or how they are treated by police or housing issues.

These comments indicate that there is an awareness of the presence of racism with regard to housing, police profiling and the quality of education. This awareness was shared by most of the White participants. These are not just issues within the legal profession, but they are issues within the greater society of the state and even the nation. In essence, Black attorneys are in search of the best quality of life that they can find, and for the Black attorney, quality of life is intricately connected to the issue of race.

Sean recalled the exodus of a fellow Black bar member from the Athens area a few years ago:

There was a fellow here several years ago, a lawyer that worked at the Legal Aid Society and he wanted to go into private practice and tried to get into private practice here and it was okay, but not really

getting the kind of income that I think that he wanted to get. He went to Atlanta, you know, where there are more opportunities for Black lawyers.

The nexus between race and a client's choice of attorneys. One of the realities alluded to by Sean's comment is the racial nature of practice clientele in the legal profession. One observation was consistent throughout this research project: White attorneys had clientele made up of both White and Black clients. As a matter of fact, White attorneys who engaged in a predominant criminal practice, typically had a predominantly Black clientele. However, the Black attorneys almost never had any White clients regardless of the nature of their practice (civil or criminal). Patrick spoke poignantly to this reality of ghettoization of Black attorneys in his interview:

I mean, I know it's happened but I can't remember seeing a Black lawyer representing a White client. I can tell you hundreds of times that I've seen White lawyers representing Black clients.

This indicates that Black attorneys who choose to set up practices in predominantly White communities engage in an almost impossible battle to attract White clientele. This reality is addressed in Sean's comment. A viable explanation for this is the perception of a lack of competence. Some of the interviewees did mention that the assumption among White colleagues is that Black attorneys were products of affirmative action and that their successful completion of law school could not necessarily be attributed to skill and intellect.

The significance of a diverse bench. Another reason that Black attorneys are attracted to the city of Atlanta is because of the significant difference between the diversity that is evident on the bench. Without doubt, most of the Black judges in the state are on the bench in the

metropolitan Atlanta area. In many locales outside of the metropolitan Atlanta area, Black judges are still a rarity. Patrick noted:

It's always good to have a judge like you. So, I'm pretty sure the Black judges aren't prejudiced against Black lawyers, one of the few generalizations we can say. And again, as I told you, is there a Black judge in Cobb? I can't think of one? Gwinnett? No!

Patrick recognized that outside Atlanta, the landscape changes significantly and the probability of success for Black attorneys drops because they are likely to interact with judges who are prejudiced. Interestingly, Patrick assumed that because Atlanta had become a safe haven for Black attorneys to practice, it had somehow become a hostile professional environment for White attorneys. He noted that "Fulton . . . White men are getting like buffalo down there." Apparently, White attorneys choose to do the same thing that Black attorneys choose to do in locating in and around the metropolitan area; White attorneys seek out environments in which they will be the majority and can feel the support of the bench, via a predominantly White bench, and comradeship from same race fellow attorneys.

Findings Related to Research Question 2: How do Black attorneys view the role of race in the legal system?

In analyzing the data using Research Question 2 as the analytical lens, five distinct themes emerged. These themes were common threads throughout the interviews with the Black participants. These themes are summarized in table 4.2 below and are discussed in detail in the sections which follow:

Table 4.2:
Themes related to research question 2

Theme 1: The judiciary, White attorneys, and jurors view Black attorneys as incompetent

Theme 2: Black attorneys are victims of race based exclusion of all levels in the Profession

Theme 3: Race influences sentencing and affects the nature of interaction between the judiciary and Black attorneys

Theme 4: Black attorneys must locate their practices near Black clientele and near a diverse judiciary

Theme 5: Jurors consider race in their deliberations

Theme 1: The Judiciary, White Attorneys, and Jurors View Black Attorneys as Incompetent

The Black attorney participants expressed frustration with the perception of incompetence that they frequently encounter from the bench, fellow attorneys, jurors, and even potential clientele. Black attorneys are challenged to present an image of success to potential Black clientele in order to counter this perception of incompetence. The Black participants agreed that this perception of incompetence is racially motivated.

Several of the Black attorneys cited examples of how judges and colleagues frequently complimented them on their courtroom style and effective presentation techniques as if they were the exception to other attorneys of color. While such statements were meant as compliments, the Black attorneys in most cases were able to see below the surface and recognized that, ultimately, such statements were insulting because they were made from the presumption that most Black attorneys are incompetent and ineffective in the courtroom. This presumption of Black attorney incompetence surfaces in discussions involving (a) the judiciary

and the myth of Black incompetence, (b) Black attorneys must prove themselves, (c) The affirmative action myth, and (d) The importance of “image” in the practice of law.

The judiciary and the myth of Black incompetence. Clarence, one of the Black attorneys, talked about an incident in the courtroom in which the judge showered him with compliments on his performance:

. . . I was a bit skeptical and when the jury went out, the judge was very complimentary about my performance and commented on my jury selection, jury striking and how he thought I did a very good job and that I identified some of the people I struck off the jury. He said, “You did just what you needed to do.” In fact he wrote me a letter of recommendation.

The reality is that Clarence’s performance in the courtroom was the expected performance of any competent attorney. Clarence’s appearance and demeanor were such that the judge viewed him as being an acceptable addition to the profession. The judge’s statement was condescending and paternalistic. Such a statement would not have been made to a White attorney who had similarly performed. The judge’s statement served to only perpetuate the myth of Black attorney incompetence.

This myth of Black attorney incompetence seems to permeate the legal profession, starting first with the judiciary, as was discussed above, and including jurors, White attorneys, and even clientele. Karen discussed incidents that had recently happened to her in which a juror and a fellow White attorney extended what was meant as a compliment to her:

Well after a recent trial that I had, I had a juror actually tell me that they were, I’m trying to remember how it was actually put, she didn’t actually use the word surprise, but that was the way I took it, about my

presentation at trial and as I said before, I believe she meant it as a compliment, but that is not quite the way that I took it and it's very hard to cite specific examples, but I can say time after time I've had comments made. Opposing attorneys in a recent case, well I don't know whether he was actually commenting on my abilities more so than what he expected. I think he kind of underestimated my aggressiveness . . .

Karen was especially passionate when she discussed this issue; she found it troublesome and frustrating that she was constantly assumed to be incompetent and had to always prove herself in the courtroom. Karen, like almost all of the other Black attorneys, noted that she has found this to be a significant issue for her career. Because they are Black, the Black attorneys believe that expectations about courtroom performance are lower because of the presumption of incompetence:

What I have found is generally in doing trial work, it brings it more to my attention, but expectations from the general public are not as high, I believe, for attorneys of color as they are for majority attorneys and once they have an opportunity to see us practice and to hear us speak and to see us go head to head with an attorney who's not of color, either I guess the expectations are exceeded and I have found that in just about every trial, at least one person will comment on that. I am sure it's meant as a compliment, but I expect as much from me as you did from the other attorney. I don't believe that they expect for us to be able to articulate our thoughts.

Black attorneys must prove themselves. The notion of having to always prove oneself in the courtroom was discussed by a number of the other Black participants. Some of participants

discussed incidents in which opposing counsel had assumed that they were incompetent or unprepared for trial and constructed strategies based on that presumption of incompetence. Adrienne recalled an incident in which opposing counsel subpoenaed her in an effort to force her to disqualify herself as counsel for a party who had sued his client:

I had too much expertise, I think for him. He was making an assumption that I was so uninformed that if I had a subpoena that I automatically had to get off this woman's case and stop representing her. So, it was kind of an assumption that I wasn't aware. I mean, I think the expertise thing, I think they did want her to . . . she had other lawyers that were not working at her best interests. But the thing that was offensive to me was that he thought that if he put that subpoena down there that I wasn't knowledgeable enough to understand that there was a choice, which is kind of, you know stupid. I knew what he was doing the minute he put it down and I just kept on talking, looked at it and it was like, "Go play that game with somebody else."

Opposing counsel was relying on Adrienne's incompetence as a trial strategy. Would opposing counsel have used the same tactic if Adrienne had been a White attorney? Probably not, since he would have assumed that she was equally as competent and knowledgeable as all other White attorneys.

Carol, who had extensive years of practice experience and outstanding educational credentials, including a Doctor of Jurisprudence and an MBA degree from Emory University along with CPA certification, talked about the impact of this presumption on her career. She too lamented that she constantly has to prove herself to her White colleagues and prospective clients:

. . . and then you have got a lot people coming after them who view the affirmative action issue in a different light than we do. And as result of them viewing it differently, they come out with a lot of anger and hostilities and assumptions that you have been given what you have because of affirmative action and therefore you are not qualified, it's just because you only got your foot in the door. Those are racially-based issues. The perception of competency, the perception of the ability to understand, and in my case, digest and process complex issues and that's before they realized that I had a CPA certification and an MBA, they don't have a clue as to who I am and when I walk in the door I'm not perceived with any ability of thinking; "Oh, this is a big deal, are you sure you are going to be okay representing them?"

The affirmative action myth. The Black attorneys talked about the affirmative action issue as if it were an albatross around the neck of attorneys of color. From their perspective, everybody assumed that attorneys of color were practicing solely because affirmative action had gotten them in the door, and as such, they were not as competent as their fellow White attorneys. This assumption flies in the face of the reality that because of the recent atmosphere surrounding affirmative action leading up the 2003 Supreme Court Case involving the University of Michigan, most law schools were reluctant to consider race in their admissions policies; even so, where race was considered, absolute minimum scores on admission exams were enforced along with other minimum admissions requirements. Thus, Blacks admitted under such affirmative action programs met a minimum admissions requirements. It is a myth that Blacks admitted under affirmative action programs are necessarily less qualified academically than are their

White counterparts. Nevertheless, it is a myth that the general public seems unwilling to depart from, and Black lawyers are apparently experiencing its impact on the profession. Even among Black lawyers who interact with primarily Black clientele, its impact is felt.

The importance of “image” in the practice of law. Several of the Black participants talked about the need to maintain the appropriate “image” in the Black community so that they would be perceived as successful, and consequently, competent and effective. Alan talked about the advice he was given at the start of his legal career:

. . . and I had an attorney tell me that when I went into practice, he said, “You get the best car out there, wear the best suits, even if you have to go into debt to do that”, which is probably why I don’t do it because he said, “There is a presumption that as a Black attorney that you are not as good as the White guy and so you’ve got to look the part so that people will believe it.”

Among Black attorneys, the appropriate image is seen as a necessity for a successful practice. If the attorney is going to be successful in the Black community, then the attorney must look successful. William spoke to the importance of image as a projection of competence in his interview:

You have to sell yourself so that your clients are going to see you living a certain lifestyle. That might communicate to them the type of attorney you are and to a certain degree that makes sense, okay? That is, you need to have real nice furniture and you need to drive a fancy car. That makes sense from the stereotypical point of view in that there is no other way to judge how well someone is doing a lot of times, unless you see how large they are living.

Image is the gauge used by prospective Black clients to assess the degree of success, and thus, the relative competence of a Black attorney. The assumption is that an attorney who can afford to wear expensive clothing, lease upscale office space and furnishings, and drive luxury cars must be financially successful; this necessarily means that the attorney must be highly competent in the practice of law. This assumption is not rooted in the reality of the practice of law. In many cases, one large judgment in favor of a plaintiff may mean huge financial gains for the attorney whose fee will typically amount to 40% of the judgment. Such a judgment may be more so a function of the facts of the case rather than the relative expertise of the attorney. Nevertheless, the more significant question is why doesn't image matter as much among White attorneys? The answer is probably rooted in the fact that White attorneys have no need to prove themselves since they are not saddled from the onset with the burden of the presumption of incompetence.

Theme 2: Black Attorneys are Victims of Race Based Exclusion at all Levels in the Profession

Most of the Black attorney participants talked about how they had experienced race-based exclusion at many levels in the profession. They agreed that the exclusion started with hiring and recruitment. Several pointed out that the absence of Black attorneys at the large and prestigious law firms was a manifestation of this exclusion. Additionally, some addressed the exclusion in terms of the ever-present "glass ceiling" that exists for those few fortunate Black attorneys who managed to get into the law firms. The exclusion was also thought to be the blame for the absence of Black attorneys serving as prosecutors and judges in many counties. This exclusion was believed to be especially problematic because it was agreed that White judges and prosecutors, in most cases, cannot relate to the primarily Black, young men who come before them on a daily basis.

The Black attorneys were all in agreement that there is a need to increase diversity within the profession as a means to dismantle stereotypes such as Black attorney incompetence as discussed above. Black attorneys believe that if the number of Black attorneys is increased in the profession, there will be greater opportunities for interaction and exposure. Carol noted that

I think it has come a long way since I started out practicing law. But, we still have a long way to go. I don't know where your study is going, but I think one thing that is impacting race or to make it less of a factor is exposure to race. The more White people are exposed to Black people, the less afraid they are, the less intimidated they are, the less likelihood that they have to develop stereotypes, the less likely they are to feel that you are incompetent just by virtue of the color of your skin.

The thinking is that stereotypes are dismantled when there is increased interaction among the races whether it's on a personal or a professional level. Thus, if the bar undertook efforts to seriously diversify its ranks, it would see improvement in race relations in the profession. Carol pointed to an example of improved race relations as a result of diversification when she recalled the efforts of a progressive thinking executive board member for the State Bar, who single-handedly attempted to embrace diversity as a culture at the bar leadership level; this executive board member managed to appoint a person of color and women to positions that had always been controlled by White males. Carol felt that the interaction had become much more positive and that racial and gender stereotypes had been torn at by such efforts. In increasing diversity within the profession, the Black attorneys believed that it would help to impact the most problematic areas of exclusion currently for the profession: (a) the discrimination against Black attorneys in employment opportunities, (b) the "glass ceiling" in the profession, (c) the impact of

race on the hiring and recruitment process, and (d) the need for diversity among the prosecution ranks.

The discrimination against Black attorneys in employment opportunities. Most of the Black attorney participants agreed that law firms discriminate against Black attorneys in their hiring and recruitment efforts, especially the large and prestigious law firm. The public asks, “Where are the Black attorneys?” “Are they not good enough?” William noted that “the problem is that big firms and these other firms are winning in prevailing to continue to get clients and they are not being taxed for the lack of diversity.” William lamented that there is not public outcry and that the bar has not pressured such firms to change and embrace diversity.

Many of the Black attorney participants recalled personal stories in which they had directly experienced racism in hiring when vying for positions at law firms and even governmental agencies. Alan discussed two such experiences when he entered the profession. He recalled going to a judge’s office for an interview for a clerk’s position; he ended up standing right in front of the hiring judge he was scheduled to interview with when the judge came out of his office looking for the interviewee and then asked his secretary where the applicant was, the secretary replied:

“Well, that’s him” and he kind of jumped and then we went in there and interviewed and after writing my name down and maybe where I was from, he put his pen down and didn’t write anymore on his little sheets of paper that he had to write on and then he and the other judges interviewed me and then when I left, I’ll never forget, they said, “Good luck.” And I thought, “Well, that’s funny.” And I got the rejection letter the next day. My interview ended around four o’clock, you know, they kind of had

to run to the post office and get that out to me just so that there would be no doubt in my mind that I wasn't hired.

Alan's experience was similar to that of the rest of the participants in their job searches; because Alan was Black he was not given serious consideration for the position regardless of his qualifications. It was apparent that the hiring judge had not even considered the possibility of hiring a person of color for this position; this explains his reaction of surprise when Alan was pointed out to him, and similarly, why it was easy for him not even to notice Alan when he entered the reception area to initially meet Alan. Alan noted in his interview that such encounters with racism in searching for career opportunities were not the exception in the profession. He also recalled going on an interview to a well known law firm in Macon, Georgia, and encountering a similar reaction:

I interviewed with a firm in Macon and I remember one of the partners came back and he said he came back from a meeting because he wanted to meet the new candidate, the new associate, because apparently the decision had been made (based on credentials). And he walked right by me as I was sitting there and then when I was brought back into his office again, she goes, "That's him." Same scenario, he took me back into his office. I was in the man's office, I'll say, if we were in there three minutes, it was only for a short period of time, and then there after he had to go and I ended up eating lunch with an associate at some restaurant.

Alan said that he understood the original plan was that he was to be taken to lunch by the interviewing partner; nevertheless, after the partner was introduced to Alan and he saw that Alan

was a Black man, he suddenly had to change the plans because of some last minute event. Alan did not get the job and chalked this experience up to the presence and prevalence of racism in the profession.

The Black attorneys spoke at length about the prevalence of racism as a barrier for Black attorneys getting into the prestigious and well known law firms, even those firms located in the city of Atlanta and its surrounding metropolitan area. Carol noted that “the first Black female partner at King & Spalding, just was made partner this year”. Similarly, Linda said:

I noticed that there were so many firms here in the city of Atlanta that didn't have any Black attorneys. And that was surprising to me because I know that in Georgia, we are still a minority as far as you know, but in Atlanta, there are a lot Black attorneys here and it's very, very competitive so I was really surprised to find out that these firms, big or small didn't have any Black attorneys working with them.

The Black attorney participants attributed the absence of Black attorneys in law firms to racism. Black attorneys are screened out and not seriously considered for positions at large firms, regardless of their qualifications. Only those Black attorneys with clearly superior credentials, that is, superior to the average White applicant, are entertained as real candidates by the prestigious White firms. Linda noted that from her own personal experience:

I had applied to so many firms and so I don't know if it was race or not. They never saw me because a lot of them I didn't even get an interview with. But I think that there are some things on my resume that indicate that I am, you know, a minority.

As a result of her experience in seeking out career opportunities in the legal profession, Linda said that she was seriously considering removing all possible indicators of race and ethnicity from her resume; for example, she had entertained removing a reference to her sorority which was a well known Black sorority. Similarly, all of the other participants expressed sentiments which indicate that they too had become very sensitive to the issue of race in seeking out career opportunities; as a matter of fact, all expected to encounter racism.

The “glass ceiling” in the profession. If a Black attorney is fortunate enough to be hired by a large law firm, racism is still a frequent obstacle that must be faced. Many of the participants talked about the existence of the apparent “glass ceiling” that exists in law firms that do hire Black attorneys. William noted that:

I’ve seen a number of Blacks who work with big firms and they complain all the time, I mean, some who have worked on big cases and they work hard for years and they won’t get recommended to be partner and move up to the partnership level. They end up leaving the firm. And I’ve seen it in big firms, medium sized firms. I know of two people, three, who just this year alone have left their firms or are in the process of leaving their firms.

Linda said that she too had friends who had similar experiences with the large law firms:

I think that race has a lot to do with it. I have had some friends that worked at firms and now they’ve ventured out into private practice because it was just too much. When they were at the firm, it was just work, work, work, and no recognition of their work unless something was done wrong. And, of course, any mishap was always highlighted,

it could have been someone else that did the same thing wrong, but was kind of amplified because the person was Black.

The experiences of the Black attorneys indicate that racism limits career opportunities at large law firms and explains why Blacks are even rarely interviewed for such positions. Even when Black attorneys are fortunate enough get opportunities with large and prestigious firms, it is likely that they will encounter racism in the availability of internal promotional opportunities.

The problem of racial discrimination in employment opportunities even cuts across to governmental positions. Adrienne recalled a position she held with a governmental agency where she experienced discrimination from a supervisor:

When I left the Department of Labor, this supervisor I had she would say to me, “Your credentials are impressive, I don’t know why you can’t do this job.” and I said, “If I had the proper direction, I could do the job.” It’s like, you know, if people were complaining, I did unemployment hearings, people complained, you know, she wouldn’t send me the complaints and then she would want to hold them against me. It was just a problem and I really wasn’t in a position to leave there when I did . . . I think that it might have had to do with race. She was originally from Alabama but she had been living in Oklahoma but I also think the fact that she kept on mentioning my credentials . . .

Adrienne said that she was forced to resign her position with the governmental agency because of the oppressive treatment. She lamented about how each time someone would lodge a complaint against her, she would be brought in and berated by her supervisor. There was no discussion about what happened; the supervisor sought no input from her. Nevertheless, the

supervisor would constantly remind her of her credentials in light of her presumed failings. This behavior on the part of the supervisor indicates that she did not think that Adrienne had earned her credentials, but in fact, had been the recipient of affirmative action, and as such, she lacked the competence to do the job. Thus, no matter how hard Adrienne worked, she would always be a failure because the nature of her job was such that she would occasionally have complaints lodged against her—such is the professional life of hearing officers. Adrienne finally succumbed to the inevitable and left her position; she has since filed an EEOC complaint against the agency and is contemplating filing a lawsuit on the basis of racial discrimination.

The impact of race on the hiring and recruitment process. This problem of racial discrimination with regard to career opportunities in the profession begins with the recruitment process. Based on the Black participants' feedback, it can be concluded that law firms and even governmental agencies are not aggressive in recruiting attorneys of color because they have a viable explanation for the lack of Black attorneys in their final cut pool. It seems to be the case that most of these firms and agencies have concluded that there just aren't enough qualified Black attorneys and only luck will land one of them at their doors. Clarence recalled attending a conference in which a White speaker was addressing the issue of "Diversifying Corporate Law Firms":

. . . One of the things that he said that is one of the parts of the problem is that we have a hard time finding qualified applicants, qualified associates, Black male qualified associates and I think before he said that, I think he prefaced his statement with the fact that the bulk of diversity in these types of settings were women . . . The first question I asked is what are you looking for and I think part of the problem is, excuse me my

voice is leaving me, I think part of it is that all these law firms use this alumni referral service. The alumni from my alma mater, that's where we go back and recruit our lawyers because we know they are getting good training there and that's the furthest thing from the truth in my mind. I think that anybody who passes the Bar has the ability to be good lawyer with the correct training and coaching.

Clarence's comments summarize the fundamental and primary problem which makes the elimination of discrimination in the recruitment and hiring practices so difficult. The profession has embraced standard practices and procedures for recruitment and hiring that are presumably color blind on the surface. Prestigious law firms only recruit at the top law schools in the country; these law firms have had a long history of excluding Black applicants—only a limited number of Blacks are allowed to matriculate. These firms do not typically recruit at the predominately Black law schools even though they may be accredited by the American Bar Association. These hiring and recruitment techniques serve only to perpetuate the status quo.

The need for diversity among the prosecution ranks. The need for diversity doesn't just exist among the private law firms, several Black attorneys noted that in many jurisdictions, the prosecutors are primarily White. Karen noted that:

. . . I can specifically say that when we attend our conference each summer, the only attorneys, the majority of the attorneys of color are primarily from one office and you can count the number of other attorneys of color that are in this field, therefore, its just not a priority . . . I'm comparing Fulton County to other metro Atlanta

offices as well, I believe in Cobb county there are zero African American prosecutors and I would venture to say attorneys of color in general.

The primary reason, according to the Black participants, that diversity among prosecutors and defense attorneys is so important is that it will lead to increased racial sensitivity and consequently result in fairer court proceedings and judicial decisions. Karen, a Black criminal prosecutor, saw her race as an asset in dealing with defendants of color:

I can only speak from my perspective as a criminal prosecutor when I look at race, but I know for sure that prosecuting attorneys of color look at cases very differently than other prosecutors. When I look at the facts of the case, I can look at it as if “but for the grace of God is my husband, my brother, my father” . . . when I look at a case from that perspective, I believe it gives me a different insight than someone who just simply looks at the file and says well if he’s charged, he’s guilty and if he an African American, he’s probably a criminal anyway. So, I know for sure that it helps us look at cases differently. It also, I believe in cases it helps us to communicate and deal with our victims and our victim’s families differently, because again we can relate to certain things that perhaps other attorneys or the prosecuting attorney can’t relate to.

Karen believed that she was more sensitive to defendants of color because she understood how racial dynamics impacted the criminal justice system. Thus, she was more suspect of police reports and testimonies; she attempted to judge the case on its merits and stated that she would

not hesitate to question a law enforcement official if she did not believe his or her report or testimony.

Since White prosecutors have limited or no interaction with Blacks in their personal lives, they frequently rely on stereotypes in decision-making. Further, in many counties, Black prosecutors are still a rarity; in such cases, White prosecutors have almost no interactions with Blacks. Therefore, very often, Black defendants are dismissed as lacking intelligence and understanding because White prosecutors are not sensitive and knowledgeable regarding Black pop culture. Linda gave an example of this when she noted that White prosecutors seemed not to acknowledge cultural differences:

A lot of times the prosecutor doesn't acknowledge cultural differences.

And in particular, I had a case where there were some kids that were dressed in basketball jerseys, which is normal for Black kids to wear basketball jerseys and the D.A. made the remark that it's not normal for kids to walk around wearing basketball jerseys (oversized).

Alan also talked about the importance of lawyers and prosecutors being able to relate and understand defendants of color:

. . . I would have other lawyers who would have Black witnesses and they would talk to them in a certain way and perhaps it was a cultural issue, just the way they were coming at them so that the witnesses sometimes really just felt overwhelmed—that they were being verbally abused, not abused but, just rapid fire questions. And it was like, “Hey, look, you know, how you come at me is really getting me angry right now.” Whereas, I could go and say, “Hey, what’s going on?” and sit and listen . . .

For Alan, he was able to experience success in such cases because he obviously could connect culturally with Black defendants and spoke with them in a respectful and affirming manner. He knew how important it was that he afforded respect to the defendants. Such cultural sensitivity is not prevalent among White attorneys and the absence of diversity serves to perpetuate the status quo. The Black attorneys noted that for them racial sensitivity was a natural professional response because they were Black. Therefore, they could relate to not only Black defendants, but any other oppressed group that they might be called to interact with as a defendant. Alan's comment captured this sentiment:

I really found that the White attorneys frequently had more difficulty relating to minorities in general. That is, being Black, I could go in there when there was Spanish speaking person or someone of Spanish descent and relate to them and understand what was going on with them and be able to diffuse a situation as well as I could with Black, West Indian, African, even Asian, because it was simply a matter of saying and maybe it comes from the fact of being a minority and understanding how sometimes being in a situation can be a bit off-putting, where someone who has never been in that situation does not understand it. And I relate to just being big. I don't know what it is to walk down the street and be afraid because I'm a big person. So, when someone says, "How could you go over there?" I'm like, "How could I not go over there?" So I related to that in that respect, so race has helped me . . .

Alan went further by giving an example of an opposing counsel who was so lacking in cultural sensitivity that she crafted a defense strategy based on her apparent inherent belief in Black cultural inferiority:

I have had lawyers who I've found to be racist. As a prosecutor, I've had defense try—I had one defense lawyer, I actually complained about who was pitching her client to me where she was utilizing his Blackness as a fault and perhaps because I've been told on the telephone I don't sound Black, she felt comfortable doing this. But I was stunned to hear the things she was saying about him. It was basically "He couldn't help it because he's Black but he is not violent because he is not young and Black", she did say words, or her exact words, it's been years but what she said, "He's not like one of those young Black males out there, you know ravaging society. He's an older Black man so he's not worried about that now . . . I wrote her a real hot letter!

Alan was able to call what he described as a "racist" attorney on the carpet for a defense that was rooted in racism. How many times had this attorney used this approach previously when the prosecutor, along with the other legal actors, was White. Why did she not know that such an approach was racially charged and ultimately unacceptable? The answers to these questions speak to the necessity for increased diversity in the field. Increased diversity not only will result in increased sensitivity to defendants through representation who can culturally relate, but it also will serve to tear at the racism, similar to the experience detailed by Alan, that has been allowed to thrive unchallenged.

Theme 3: Race Influences Sentencing and Affects the Nature of Interaction Between the Judiciary and Black Attorneys

The Black attorney participants were consistent in their assertion that there is a nexus between race and the nature of their interaction with the judiciary and final outcomes in criminal and civil cases. It was generally agreed that White defendants and plaintiffs receive preferential treatment by judges. Further, the Black attorneys also felt that judges treated them differently because of their race. Many reflected on past experiences in which judges had displayed a lack of respect for them because of their race; these experiences included examples of judicial race-based disrespect and adverse decisions that the Black participants believed were racially motivated. Many of the Black attorney participants recalled specific instances in which they thought that the judge rendered a harsher sentence for their client solely because their client was Black.

The Black attorneys generally agreed that White judges are more lenient on White defendants than on Black defendants. In addition to discussing the discriminatory behavior of White judges, the White participants also addressed the following problem areas: (a) Black judges are also biased against Black defendants and (b) The impact of race on the interaction between judges and attorneys. In addressing this issue, several of the Black attorneys were “familiar” in their response as to say that “we” as Black men and women know that racism is a problem from the bench. Linda noted that:

You will see the difference in, you know, the charges that he is willing to dismiss, how much he’s willing to work with the White family as opposed to a Black family and it’s you know, there are blatant differences.

Linda worked with Juvenile Court in the metropolitan Atlanta area and said that it was absolutely the case that White judges were more lenient with White juvenile offenders and much harder on

Black offenders. The White judges were more likely to be willing to work with White families. The assumption seems to have been that the White youths simply needed rehabilitation since they had committed an error in judgment or made a mistake which could be remedied; with regard to Black youths, the assumption seemed to have been that they were destined to be deviants, and as such, harsh punishment was appropriate.

The Black attorney participants posited that White judges assume that White defendants are innocent and that Black defendants are guilty. They attributed this assumption to race. Alan gave a somewhat shocking example of this White judicial assumption of White innocence and Black guilt in criminal cases. Alan recalled a case in which the primary offender was a White female. The judge in the case assumed that she had somehow been forced to participate in the alleged crime. The judge directly questioned her about how she had been forced to take part in the crime even though there was no evidence to support this assumption:

The White female was from Tennessee and had just pled guilty to six counts of felony drug dealing in Tennessee and was to be sentenced in Tennessee. We are taking our plea in Dekalb County and after the girl pleads guilty, we are trying to say it's her drugs and I'll never forget, the judge asked her, "Why did you say that these were your drugs? Did the other people make you say it was your drugs?" And here I am thinking to myself, "She's the White woman, the facts are she was driving the car. She is the one who pulled up, slowed down, did all the other things relative to getting them for the drugs. She is the one who just pled guilty to six counts of cocaine possession in Tennessee and is going to jail. I think she was

looking at ten years in Tennessee. The two Black males have no priors and you are going to ask this woman if they told her to say the drugs were hers?”

The judge assumed that there had to be force and intimidation involved for a White woman to plead guilty to a crime and to testify in support of the exoneration of two Black defendants. He had concluded that the real culprits were the two Black defendants; just as the juvenile court judge discussed by Linda assumed that Black youths were inherently criminal, the judge in this case made a similar assumption about the two Black co-defendants—they were the ones who were the criminals and there had to be a logical and viable reason as to why a White woman would be involved.

Black judges are also biased against Black defendants. This problem of judicial bias in sentencing and interaction with defendants also exists with Black judges interacting with Black defendants. This is an issue of either internalized self-hatred or self-preservation. Either the judges actually believe that most Blacks are inherently criminal and violent and warrant harsh sentences and treatment, or they issue such harsh sentences to make it look as if they are hard on crime regardless of the color of the defendant. It just so happens that in most cases, the defendant will be a Black male. William gave an example of this issue in his interview:

The judge gives him five years. Black judge! Black defendant. Latino female. And you are sitting up there and you say, wait a minute, now, I understand he is nineteen but clearly he didn't take advantage of this girl. What he did was wrong and the law says that because he is under twenty or twenty-one, you can give him a probated sentence. You don't have to give him a lot of time. Judge gives him five years. For what?

What? No, the judge is making a political decision. You are being put under pressure by the press for giving lenient sentences, “I’m a Black judge. I know I’m vulnerable and if someone runs against me, it is just because I’m Black, no way in the world I’m siding with you.”

William was making reference to a case in which a young female continually harassed a then 18 year old Black male in an effort to get him to have sex with her. Evidence was put forth to show that the female called the young man and invited him to meet her for the purpose of sex. She gave graphic details of what was to occur. She did not refute this testimony at trial.

Nevertheless, the prosecutor pursued a conviction and the judge issued a harsh sentence.

William believed that the judge ultimately did not care about the young man because he may have assumed that all such Black men are criminals and that ultimately he acted to protect his own career on the bench. William’s statements can also be used to support the contention that such Black judges have internalized self-hatred of their own race, and this self-hatred is evident in harsher sentences. Adrienne’s comments also supported this conclusion of internalized self-hatred. She noted that:

We have a couple of judges that are just hard sentencers and I think they sentence, and one of them is a Black judge. I think they sentenced, you know, this particular one sentence, you know hard either way, Black, White, Hispanic, whatever . . .

Nevertheless, the reality is that most of the defendants being referenced by Adrienne are Black males who come before the judges. The White defendant is the exception; as such, the White defendant may be deserving of a harsh sentence. This does not necessarily mean that the other, primarily Black, defendants should be given equally harsh sentences. That is, harsh sentences

may be regularly handed down because, in fact, most of the defendants are Black and the judges are acting out of racial bias (White judges) or internalized self-hatred (Black judges).

The impact of race on the interaction between judges and attorneys. Another way in which race impacted the judiciary was in interaction between judges and attorneys. Many of the Black participants felt that their own race affected their interaction with judges or the way in which judges related to them. The Black attorneys believed that many judges treated them differently because of their race. They believed that oftentimes judges rendered adverse decisions against their clients or assumed that they were incompetent because of their race. Adrienne recalled a conversation that she had with a judge in which the judge admitted that he had not always been fair to her when she argued cases before him:

I did just about all juvenile work and he was a superior court judge.

And I think that he didn't know me and after I stopped working at the University, he asked me would I take appointed cases and I told him, "Sure." I said, "I'll send you my resume" and he said, "Well, I know you are qualified." And I sent it to him anyway. And then subsequent to that, we had a conversation one time where he acknowledged that he had not been fair to me when I came here. And he said, "I know you thought, I was a son-of-a-gun" and I was diplomatic, I said, "well, it was a difficult time", it was a time of adjustment, I guess, for them, you know, the legal community. And anyway so we had a nice conversation . . . because I was female and Black and from the North, he made assumptions about me. He didn't know me and I think over time, you know, when I would have

cases in front of him when I was in private practice, I think he recognized that his assumptions were wrong . . .

Adrienne was forgiving of the judge even though she did acknowledge that she was treated differently and somewhat with disrespect by the judge solely because she was a Black woman. Interestingly enough, she was impressed with his confession and thought that such a confession may have been an indicator of change. Even if such change had occurred, it came too late for this judge since he was due to retire soon. How many of Adrienne's cases should have had a different outcome if the judge had been fair and truly impartial; her race had affected the outcome of some of the cases she argued before this judge.

In complex cases, judges frequently assume that Black attorneys are less capable than their counterparts. Maybe this assumption is made because it is still a rarity in many jurisdictions outside of Atlanta to see Black attorneys handle such cases. Karen recalled that a judge actually once questioned her presence as counsel on a death penalty case:

“ . . . a judge asked me when I was introduced as co-counsel on a death penalty case if I was simply there as window dressing, that was the term that was used. Well, what are window dressings?

Karen noted that this was in Superior Court and that the judge is still on the bench. She was shocked and appalled! The judge's statement clearly indicated that he did not take her seriously as a co-counsel. Karen attributed his response to her race.

Similarly, Linda recalled a negative experience she had while recently interacting with a judge in Rockdale County:

I had an incident in Rockdale County where the judge wouldn't even look at me and I don't know if it had anything to do with race or it had anything

to do with the nature and circumstance of the case. I mean, but of course, me being in Rockdale and that was my first trial in Rockdale, that was my immediate reaction. Was this a race thing or whatever and my clients were Black and it was a custody issue.

Linda was so surprised by the judge's reaction that she looked for other reasons for his behavior other than her race. She thought maybe, it was the nature of the case. But, why would that prevent a judge from making eye contact? She reluctantly concluded that it had to be race. The judge's reaction in this case indicates a lack of judicial respect for her as counsel. Without doubt such negative interactions with the judiciary impact judicial decision-making.

Theme 4: Black Attorneys Must Locate Their Practices Near Black Clientele and Near a Diverse Judiciary

The Black attorney participants were in agreement that location was extremely important to the success of their practices. This is because success was deemed to be directly related to the racial makeup of the community in which a practice is located. Black attorneys prefer to locate their practices where there is a supportive bench and potential clientele. This almost always means a preference for the metropolitan Atlanta area because that is where the great majority of Black judges and attorneys and Black residents in the state of Georgia are domiciled. For the most part, potential Black clients seek out Black attorneys and potential White clients seek White attorneys. Black attorneys who insist on locating in White communities suffer from racial isolation which results in professional failure since White clients typically do not seek them out for legal services.

When their practices were located in the metropolitan Atlanta area, race was less of an issue. This is because in the metropolitan Atlanta area, a significant proportion of the lawyers and judges are Black; therefore, racial awareness and sensitivity are more likely to be present.

Many of the participants noted that they have located their practices to minimize the impact of race on their individual practices. This issue of location surfaced among the Black attorneys in their discussions related to each of the following: (a) Black attorneys avoid cases in jurisdictions outside of Atlanta, (b) The diversity of the bench matters to the practice of Black attorneys, and (c) the availability of clientele is important to practice success.

Black attorneys avoid cases in jurisdictions outside of Atlanta. The Black attorneys very frequently would avoid cases that would require court appearances in jurisdictions outside of the Atlanta metropolitan area. Many of the Black attorneys recalled experiences in jurisdictions outside of Atlanta in which race had been a primary factor; therefore, in order to eliminate the stress caused by such experiences, they choose to limit their practices to the Atlanta area. Carol noted that many times when she has had cases outside of Atlanta, she has had to deal with the presence of racism:

You have to leave the metro area, but you don't have to go far.

Fayette county is just a stone's throw way and we've just had an African American who was appointed as the first judge ever in that county and he's on the magistrate court but it just happened this year. Chuck Floyd is his name, so he's maybe somebody you will want to talk to about racism. And another African American judge who was just appointed for the first time in Newton county which is Covington and he's an African American who went to the University of Georgia and he just got appointed for the very first time in history. So, we are just expanding outside the Beltway really. And so those judges

and those courts . . . I have had home cooked justice and very nice, polite, both racial and gender offensive kind of reactions from people.

Carol noted that her treatment in Fayette and Newton counties had been racially-based; she thought that opposing counsel and the bench treated her differently because of her race.

The diversity of the bench matters to the practice of Black attorneys. One of the reasons that Black attorneys prefer the Atlanta metropolitan area is that Atlanta has the highest concentration of Black attorneys on the Bench; therefore, Black attorneys frequently try cases before Black judges. This was deemed professionally comforting to the Black attorneys participants. Additionally, the Black attorney participants assumed that race was less of issue in a jurisdiction in which the Bench was diverse in its racial makeup. For example, Carol noted that it was her preference to restrict her practice to the metropolitan Atlanta area where Black judges and attorneys were not a rarity:

When you think you've got eighteen judges on Fulton County Superior Court, well, nineteen now, and out of those nineteen, you've got eleven Black, it changes the dynamics. Those judges interact with other Black people who are equals or peers and they have a way of dealing with other Black lawyers as a result of the interaction in a much different manner. When you go out to Fayette county, you don't have any and there was not an opportunity to interact with anybody you considered a peer so that's where you didn't have the sensitivities, you didn't have the awareness, you didn't have somebody to go bounce off this, "Should I call them this? Should I call them that?" Even in Fulton and Dekalb, Dekalb

is a little bit slower but they've got four or five in Dekalb, so it's just changing. I don't think we have any in Gwinnett though yet (laughs).

The Black attorney participants seemed to be aware of the racial makeup of the judiciary and the bar in the areas in which they practiced. The Black attorneys who practiced in the metropolitan Atlanta area had all chosen to locate their practices in an area that they thought would be "race friendly".

The availability of Black clientele is important to practice success. Another reason that some of the Black attorney participants had chosen to locate their practices in the Atlanta metropolitan area was because of the existence of a sizable Black clientele. As has been previously discussed, Black attorneys are highly dependent on Black clientele for professional survival since White clients do not seek them out for services. By far, White clients seek out White attorneys. Alan chose to locate his practice in south Dekalb County to assure himself of a large Black clientele and to take advantage of significant Black representation on the local bar and the judiciary:

We are in south DeKalb County, so you have got to factor that into that there is not a, this is a Black Area. I mean, there are Whites that are in the extreme minority over here in this part of the county. So, I have a majority Black clientele, I'll say ninety-nine percent Black client base.

Alan explained that:

I mean, here in Atlanta, you are going to be hard pressed in the metropolitan Atlanta area to practice law and not see and interact with Black attorneys on a routine basis . . . Now, maybe if you're out in the more rural circuits, maybe the Black lawyer ratio is significantly less and therefore

any stereotypes that might exist aren't going to be confronted . . .

Alan found comfort in practicing in an area in which he knew that he would have a clientele that he could relate to and who would not be suspect of his ability and expertise. Indeed, he had developed a successful practice in the area in which he was located. Further, he knew that the issue of race would be much less important in his practice because he was located in an area that had significant Black representation on the bar and the bench.

Theme 5: Jurors Consider Race in their Deliberations

A significant number of the Black participants detailed experiences they had encountered in which the jury voted to exonerate a criminal defendant in the face of evidence to the contrary; this was viewed as a retaliatory strike against the criminal justice system. Similarly, oftentimes White jurors frequently vote against Black defendants based solely on racial stereotypes. The Black participants addressed this issue surrounding the connection between race and jury deliberations in the following context: (a) Black jurors are sympathetic to Black defendants, (b) The courtroom is a racially-polarizing environment, and (c) White jurors consider race in deliberations.

Jury nullification has its roots in English common law and occurs when a juror believes that the evidence presented at trial establishes the defendant's guilt, but, nonetheless, votes to acquit (Walker, Spohn, and Delone, 2000). Some Black people see jury nullification as an opportunity to correct some of the past injustices of the criminal justice system. Professor Paul Butler, a Black professor of law at George Washington University Law School has gone as far as to argue that "it is the moral responsibility of Black jurors to emancipate guilty Black outlaws" (Spohn and Spears, 1996, 675).

Black jurors are sympathetic to Black defendants. The Black research participants who addressed this issue all seemed to understand why it happens and seemed to think that it was necessary. The Black attorney participants not only understood why jury nullification happens, but they also supported its occurrence.

William gave an example of how jury nullification works and of how he uses it as a trial strategy in selecting potential jurors in cases:

So on the other hand, if I go in front of a jury and we get some these Black mothers on there, I think they may say, "I'm not sending a Black man down the road when she knew what she was doing." So, I just may get a jury nullification in this case.

William was discussing a case in which a Black man was accused of rape and noted that he believed that oftentimes Black mothers are sympathetic of Black men to the point that in such cases they often decline to vote for conviction.

Although, in most cases jury nullification is not detected, Robert noted that he had a mistrial declared once because of the issue of jury nullification:

I've had one mistrial as a result of jury nullification . . . the majority of the jurors felt that these African American jurors were predisposed to not convict.

The courtroom is a racially-polarizing environment. There was a belief that the entire racial makeup of the courtroom with all of the trappings of justice was a racially-polarized environment. As such, Black jurors were always inclined to move toward jury nullification.

Victor painted a clear picture of this racially-polarizing environment:

. . . it also brings about jury nullification . . . you get an all Black

jury, a White judge, a White court reporter, a White baliff, all White police officers testifying, and you've got a White DA and here you got this Black defendant . . . and everything becomes suspicious with Black jurors . . .

Victor's description seems to suggest that Black jurors view the courtroom and its environment as an ongoing symbol of oppression, and as such, they always seize the opportunity to win one against the oppressive system.

White jurors consider race in deliberations. Race is taken into consideration in reaching verdicts by White jurors also. William gave an example of a case he handled in which White jurors voted based on race:

There wasn't evidence to convict but one or two people on the jury refused to vote not guilty. This is where a . . . what was the charge . . . murder charge. Where a Black guy was charged with shooting this man, two crack addicts testified and admitted that they lied. The foreman of the jury was a senior executive for a company whose facility was in the heart of a low income Black neighborhoods and his experiences was "apparently they are all the same" so I'm putting him away, too, I don't care what the jury says.

William's statement indicates that White jurors often vote based on racial stereotypes regardless of the weight of the evidence.

Findings Related to Research Question 3: How do White attorneys view the efficacy of continuing legal education in addressing the role of race in the legal system?

There were many significant points which I noted after the analysis of the data in response to research question 3. These points were: (a) the White attorneys agreed that the bar

is silent on the issue of race with regard to CLE offerings; (b) the White attorney participants were seemingly supportive of both the status quo and limited change in the current CLE approach; (c) the White participants all agreed that the current approach and format has gross inadequacies especially with regard to its ability to address the issue of race, but they could not agree on how to address this inadequacy or whether or not the inadequacy should be addressed at all through continuing legal education; and (d) the White participants seemed reluctant to step outside the boundaries of the current format; they seemed to see the usefulness of addressing the issue but questioned whether or not CLE was the correct forum through which to address the issue. Each of these major points will be detailed in the discussion which follows.

All of the White participants noted that the topic of race was noticeably absent from CLE programming. None of the participants could recall one CLE experience or one CLE provider who had addressed the issue. Such silence speaks to the importance of the issue to the profession as a whole. Apparently, the profession does not deem the issue important enough to the practice of law that it should warrant consideration in continuing legal education requirements. Sean, when asked about CLE experiences that addressed race retorted, “If it (that is, addressed race) has, I’m not aware of it.” Donna noted:

I don’t recall ever having heard, just discussed per se, issues of race in the continuing legal education environment. I mean, I can’t think of a single . . . continuing legal education program that I’ve attended that has specifically dealt with race.

Most of the White attorneys had not thought about the issue until they were asked about it during the interview. Donna thought out loud about why the issue may have not been addressed. Like all of the other White participants, she really could not think of a reason. She did note that to her

knowledge, the bar wasn't required to address the issue: "Well, as best I know, there's nothing in continuing legal education that requires us to consider the role of race." This begs the question of why not? Given that the findings regarding research question 1 clearly link race as an important factor in the practice of law in Georgia, it can be persuasively argued that the bar is obligated to address it in its continuing legal education requirements. The White attorneys seemed not to recognize themselves as a party to the policies set and administered by the bar regarding continuing legal education requirements. Without doubt, if each of them and their fellow members of bar demanded change, the bar could not ignore such demands.

One of the primary reasons or excuses among the White attorneys as to why CLE had not addressed race was that the topic, while important, did not seem to fit. This conclusion was easy to reach because the current CLE structure was assumed to be the appropriate structure through which the topic should or would be addressed. James noted that "there's not much in continuing legal education where it discusses race, bias, preferences, that sort of thing. I think you plow straight ahead assuming that it doesn't fit." However, why doesn't it fit? Continuing Legal Education is mandated by the leadership of the State Bar of Georgia. The reality is that the topic will fit when the leadership decides that it should fit. Again, James assigns blame for the decision to exclude the issue to others—he declines to share in the blame for the exclusion.

Only one of the White attorney participants recalled ever experiencing or seeing a CLE event in which race was addressed. Janice recalled:

I haven't seen much reaction by the profession. I mean just very recently, I just remember seeing some sort of advertisement for some sort of continuing legal education thing where they were having like a session on minorities in the profession. And I think in nine years it is the first time

I've ever seen anything like that. And it's not an issue I think I've really heard talked about by the profession meaning like Athens Continuing Legal Education or at Bar meeting or anything like that. So, it's not something I really have noticed the state bar paying any attention to whatsoever.

Janice could not recall where she saw the advertisement but she was sure that she had recently noticed such an ad for the first time. It is unlikely that Janice saw the ad as an offering in the Institute for Continuing Legal Education in Georgia because the Institute has not had such an offering in its history. She may have seen the ad in another CLE provider's advertisement or more likely she saw that ad soliciting participation in the event scheduled by the Gate City Bar Association (Association of Black Attorneys based in Atlanta) at the State's annual Bar meeting. In any event, all of the White participants agreed that the bar is silent regarding the issue of race in continuing legal education offerings. Most admitted that they had not thought about the issue until the interview but did think that it was worth the bar giving consideration to its inclusion in the future.

Probably the most startling finding which emerged in response to research question 3 was the support for the status quo in CLE offerings and programming. The White participants seemed to genuinely be concerned that the CLE had not addressed the issue of race in any of its past offerings; however, many were not sure that the issue could be effectively addressed in the current CLE environment, and as such, saw any attempt to address the issue as doomed to failure and frustration. Consequently, they were not eager to experiment with change; they'd rather keep things the way they are now. Donna spoke to this issue when she noted:

So, I think it would be hard to run a CLE program where you are dealing with some of these difficult Issues. People don't go to CLE to deal with

stuff like that. They go to get updates on the law and find new ways of dealing with certain types of things. It's not what people expect to deal with.

Donna explained that "if it is conscious raising, is that the place to do it? Or the methodology of doing it?" Yet when pressed for an appropriate and effective technique, she could offer none. If not CLE, then where? The reality is that professional education should address issues that affect the practice of that law in Georgia. Donna did recognize the value in addressing the issue; she just did not think that change would result from CLE experiences:

Anything a society does, I think, to demystify other cultures, to facilitate interaction between cultures . . . It would be viewed as being positive so I would say from that standpoint, sure . . . but I'm not sure these changes happen in a lecture setting with a presenter.

There was a reluctance to challenge the current CLE format. Most of the White attorney participants were unable to see beyond the current CLE format and structure; therefore, most of them questioned the effectiveness of a CLE program that would be designed to address the issue of race in the profession. If the current format is not conducive to addressing the issue of race, then why not change the format? This alternative seemed unavailable to almost all of the White attorney participants. The White attorney participants seemed comfortable in allowing the current CLE format to act as a constraint against addressing the issue of race. It was not evident to the White attorney participants that the current format had been designed by White male attorneys; as such, inherent in its design was the protection of the interests of the power brokers in leadership positions. The inclusion of race is a direct threat to those interests; thus, it should come as no surprise that the current format makes it difficult to address such issues.

The White attorneys did not see the urgency in CLE addressing the issue since, according to most of them, there had been so much progress in race relations since the 1950's and 60's:

Patrick explained:

I don't see any obvious advantage of . . . you know, putting a problem . . . out front and talking about it. It's certainly a good thing but . . . the exclusion is not the exclusion of the fifties or of the sixties or seventies. I mean, there is not overt prejudice.

Patrick recognized that racism in modern American society often manifests itself in a more covert, sophisticated, and subtle fashion relative to its presence in the 1950's and 60's.

However, what he failed to account for is the reality that although its manifestation is different today, this doesn't mean that it is any less pervasive, and therefore, no less worthy of attention.

Patrick went even further by noting that he thought it would be inappropriate to address the issue of race:

I don't think it would be appropriate and I don't think it would solve the problem and to just to be very candid, if I see a seminar program and it's on race relationships and law and then there is another one that says "Tax Consequences in Drafting Divorce Settlement Agreements", it's not going to be a hard choice for me.

Patrick was adamant about there being no need for CLE offerings which addressed the issue of race, he noted that CLE offerings should be useful to the practice of law and an offering addressing race would lack such relevance:

But if you just plunk out a seminar out there on a general topic, nobody is going to go to it and I don't care what it is, whether it is flower arranging

or race relations . . . it's got to be on something that we are going to need, we are going to use and we are going to get credit for because we have got to get trial practice credits, we have got to get professionalism credits, we have got to get ethics credits and unless you can squeeze into one of those categories where I need my hours, I ain't going.

Dave agreed that addressing the issue of race in CLE programming would be a good idea; however, he thought that it would be a failure because such an effort would amount to “too little, too late”: “So, you have gotten to that point in your life and you hadn't been interested enough, or you haven't figured it out? One little three hour CLE class is not going to do any good.” Dave noted that he thought such an attempt to address the issue through CLE would be viewed as a negative: “And I think also what creates negativity is when people are forced to do something that they are resistant to—they look for reasons to justify their own thought.” Dave thought that those who most “need the class probably won't get anything out of it” because they would be so negative about it from the start. Dave's comment does not recognize the complexity of institutionalized racism and how it plays out in society. While it is true that one CLE class will not effect significant change; it is also true that a CLE class which addresses race would go a long way toward eliminating the silence currently surrounding the issue and would at least make attorneys think about its relevance in their practice. Currently, there is nothing which challenges attorneys to consider race as an issue in law practices. If there is to be an avenue for progress, it will start first with consciousness-raising. Several of the White attorney participants recommended that the structure be changed to allow for discussions and interactions with an eye toward consciousness-raising:

I could certainly see . . . dealing with the topic or having it as part

of a continuing legal education program, brief discussions of a . . . probably much as anything a consciousness-raising . . . you know, the whole discussion about language which I think is important and is less difficult. It's a more facially neutral topic to talk about. I could see that being done.

Donna noted that most of her colleagues were oblivious to the impact of race on their practice let alone the profession as a whole; therefore, she thought it made sense for the bar to address the issue through CLE. She thought that consciousness-raising should be the first objective. She wanted to see CLE embrace a facilitative setting:

So, dealing with the issues in a facilitative setting. Yeah, not a bad idea.

I'd love to see what would happen if the continuing legal education folks put together a seminar and it focused on racial issues, how we . . . deal

With them, work with each other.

She thought that she and her colleagues needed to be occasionally challenged in their beliefs in order to make progress on the issue:

But my own belief is that people would be challenged in their beliefs and in this thinking; including lawyers, including judges, you know, we all sort of get stuck in our little niches. And it doesn't hurt us to be nudged. . . It would be interesting to see if anybody showed up and that's why I said earlier if you were going to try to inculcate this into the system, it would have to come from up top to say that we have this. I don't know if any states do that or not . . .

There were a few White attorneys who did recognize that if the Bar were to address the issue of race effectively that it had to change its current approach. These participants thought that the need to address the issue outweighed any perceived need of comfort in retaining the current CLE approach. Also, these participants agreed that the current approach was ineffective even in addressing issues related to the maintenance of technical skills. Several discussed the current CLE process in which participants attend CLE sessions in order to “get their cards punched” so that they can acquire the necessary 12 hours each calendar year in order to maintain their licenses to practice law. Several admitted that they had observed fellow attorneys leaving CLE sessions after check-in or doing other legal work while CLE seminars are in session; they agreed that very few attorneys give the seminars their full attention. As such, they welcomed change in the current format.

Several of the White attorney participants thought that one of the immediate actions that could be taken in addressing the issue of race through CLE was to first diversify the CLE presenters. Donna noted that CLE needs diversity among the presenters:

I don't know to what degree there are even . . . minority race or ethnic groups that are represented on the professional staff at continuing legal education. I can't think of any . . . the people that I could think of over there are White males (laughs).

Donna assumed that there had to be Black representation among the CLE presenters and planners but that she just had not seen them. Donna's assumption is erroneous. Program Planning at CLE events sponsored by the Institute of Continuing Legal Education in Georgia has historically not included people of color, and the presenters at the CLE events are rarely Black presenters. Patrick reiterated Donna's opinion with his observation. He noted the CLE planning must

become more inclusive; he maintained that we need to start by including Black attorneys at the planning table:

We need a Black guy on this committee, I mean, hell, I've said it (laughs).

So you know, that in itself is a problem and you call it tokenism or whatever but it's still receptive as opposed to saying, "Hell will freeze over before we have . . ." I hope we are beyond that, I certainly have not never, ever experienced that in any sort of organization, any attitude anywhere. Never, ever.

Both Donna and Patrick recognized the significance of diversity among presenters in breaking down barriers and racial stereotypes that exist as a result of limited or no interaction among the races within the profession. The White attorneys were surprised at how little interaction they had with Black attorneys given the significant Black membership in the Georgia Bar. Several of the Black attorneys also talked about this issue; many desired to see an increase in Black CLE presenters as a means of letting White attorneys know that Black attorneys also have expert knowledge in specialized areas of the law and should be sought out for their input. These attorneys thought that very often the assumption that their success could be solely attributed to affirmative action did not allow White attorneys to view them as professional equals or as attorneys with expert knowledge in a given area of the law.

There is a need for the Bar to mandate a race component to continuing legal education in order to successfully address the issue. As many of the White attorneys noted, simply offering a race-related CLE event that is optional will not be successful; those who should attend will not. Further, an optional offering does not acknowledge the urgency of the program and the

significant impact of race on the profession. As of the writing of this dissertation, only the state of California mandates the inclusion of a race or bias component in CLE requirements.

Another option would be to include a requirement to address race as a part of one the existing mandated topics. For example, the current mandated topic of Ethics could easily and justifiably be expanded to include the coverage of race. Paul included this option in his feedback:

Well, I think that you certainly would in a CLE class, which is typically a day or two or more . . . that you could certainly have half an hour, an hour dedicated to particular issues . . . and definitely in the criminal issues based on what we've talked about there are obviously issues there. And so I certainly think it could definitely be a part of CLE and we have to do some of the ethics and I think we usually could tie it to a certain ethics portion of CLE. It could be very effective.

However, such an approach would be quite limited. This would mean that one or two hours each year would be set aside to address race and race would be only one of the many topics that could be addressed under the topic of ethics; the CLE offering becomes optional under this proposal and as such, would be potentially doomed to failure. A far more effective approach would be to infuse race as a topic throughout all CLE. Such an approach could be justified by the fact that race impacts almost every area of the legal practice, and as such, a far reaching approach is necessary in order to adequately address it and to stress the importance of the issue. Sean argued for such an approach when he noted that it would be a "good idea during any program to have somebody come in and talk about the implications of race on this particular topic".

Findings Related to Research Question 4: How do Black attorneys view the efficacy of continuing legal education in addressing the role of race in the legal system?

The Black attorney participants discussed the issues surrounding research question 4 with a decided sense of urgency. There were a number of significant points which I noted in the analysis of the data in response to research question 4. These points are: (a) the Black attorneys agreed that CLE should address the issue of race and that the status quo was not acceptable, (b) the Black attorneys agreed that even if the objective was simply consciousness-raising, that this objective was an acceptable start, (c) many of the Black attorneys thought that the Bar should start by including more Black attorneys as CLE presenters as a tool to tear at racial stereotypes, and (d) almost all of the Black attorneys supported mandated race awareness in CLE. Each of these important points will be discussed in detail in the discussion which follows.

All of the Black attorney participants noted that they had never attended a CLE program in which race had been specifically addressed. Adrienne observed that she had never even seen “anything addressing race” from the Bar. Linda also observed that she had “never seen any courses offered that dealt with the issue of race.” Given that all of the Black attorney participants indicated that race was a significant issue to the practice of law, how is that the Bar has never addressed the issue through CLE programming? The answer to this question lies in what the overall members of the bar deem to be important, and in who is at the planning table. The Bar has not recognized the problem and CLE programming is controlled by those who are in leadership positions in the several CLE provider organizations. CLE planning is currently accomplished against the backdrop of the functionalist approach. The intent and purpose of CLE programming is to maintain and cultivate expert knowledge needed to successfully practice law.

While each of the separate voluntary race and ethnic-based bars engage in their own individual programming, these programs are typically attended only by their respective members; in most cases, the general membership of the Bar is unaware of these offerings. Carol noted:

. . . so what we ended up having are specialized bars, we've got a Hispanic bar, we've got an Asian and Pacific American bar, and we have got a Black bar association and those organizations get together and do things.

Nevertheless, White bar members are typically unaware of the program offering of these specialized bars, and even if they were aware, it is questionable that the vast majority would voluntarily attend such offerings.

Even in those cases where skepticism about its impact or its ability to bring about change was expressed, the attorneys at least agreed that it was a start. Adrienne said in frustration: "It's a start. I don't know if it is going to change anybody." For these attorneys, silence was unacceptable because it only served to perpetuate the status quo and the status quo is unacceptable. Adrienne further noted:

I think awareness is the first step. And if they can deal with some awareness and deal with race, then I think my mind might be able to go to other things that they can do but they haven't really taken the first step as far as I'm concerned.

Some of the attorneys were somewhat more optimistic about the effects of such a first step. Some thought that by raising awareness of the issue among the members of the bar through CLE, change might be forthcoming. Karen expressed this sentiment when she noted:

I think it certainly could play a role and not as much for the attorney's of color as I think it would also enlighten the general population of the Bar to be made aware of color, and race, and how it does play a part in the practice of law so that everyone can be made aware. I think the attorneys of color are already aware of it and I think it would be helpful and beneficial for the rest of the Bar to not just be made aware, but to become more sensitive to the fact that race and color play, I believe, a significant role in the practice of law . . . I'm not sure if I'm just dreaming, but would hope that when a person becomes more aware of something, they become more sensitive to it. They are more responsive to issues as they arise and that it would help in basic communication, and effectiveness in the practice of law.

For Karen, the usefulness of including race in CLE offerings was primarily through raising awareness among the White members of the Bar. She and many other Black attorney participants believe that the Black members of the bar are already aware of the impact of race on the profession because racism is a part of their daily lived experiences both at the personal and the professional level.

This idea of consciousness-raising and increasing sensibilities was common throughout the interviews with all of the Black attorney participants. The notion here is that the existence of racism in society and its impact on the profession of law is so normal to the fabric of our society that White people do not notice it. Its presence in the practice of law is so prevalent from the perspective of the Black attorney participants that it is not normally noticed by White lawyers; therefore, a CLE offering aimed at increasing sensibilities would be a good start. Carol noted:

There should be offerings for how do you deal with people of different races or racial sensitivities because I don't think that a lot of older people, like the twenty-year and out folks, I mean, they just don't know.

Carol thought that the problem exists primarily with the older members of the bar who may have grown up in a world that did not value diversity, and as such, they have not had much exposure to people of other races and culture. She did not recognize that even young White attorneys were also a part of the problem since they benefit from White privilege in the profession and have a vested interest in protecting the status quo. Nevertheless, she recognized that racial awareness was the starting point in addressing the issue through CLE.

The Black attorney participants believed that the need for diversity was so pressing in the profession that diversity should be addressed through CLE programming. The participants thought that the bar could address it in two ways through CLE: one way was through the utilization of diverse CLE presenters and the other way was through diversity consciousness-raising in the individual CLE programs. Alan felt that through the increased presence of Black attorneys in CLE sessions, progress would be made in breaking down stereotypes of Black attorney inferiority and incompetence:

even if . . . they address the issue in terms of just having more African Americans as presenters of CLE topics because I know attorneys who are African American who do CLE topics. From that perspective, that does a lot to undercut the concept of Blacks lacking qualifications. . . . I think to confront the issue head on is having more people of diverse backgrounds being presenters which will combat stereotypes as opposed to trying to indoctrinate someone, lawyers,

for the most part, aren't going to be indoctrinated because we are strong and opinionated people and the minute you say something offensive, you've lost me.

Alan believed that using diverse presenters was the most effective strategy that CLE could use to address the race issue and help dismantle stereotypes. Many of the attorneys believed that part of the problem rests with the limited interaction the White attorneys have with Black attorneys in the bar. Black attorneys interact primarily with their fellow Black bar members through specialized bars such as the Gate City Bar Association. Such self-isolation is a result of exclusion from the State Bar Association; the Black attorneys felt that their voices were silenced in that setting.

Alan believed that in their limited interaction with Black attorneys, White attorneys interacted primarily with Black attorneys who confirm their deeply held stereotypes and that through the use of diverse presenters or the inclusion of Black presenters, CLE could help to eliminate these stereotypes:

There is a difference there so if you are dealing with people who confirm your stereotypes and you are practicing law, you don't deal with Blacks who don't confirm your stereotype. Your stereotype is confirmed over and over again which is why I say that CLE can change by just putting those faces up there and having them speak because there are plenty of competent African American attorneys around who can speak, lecture and do all these things and once people deal with it from that perspective, it's like . . . "you know, Blacks aren't as dumb as I thought", but what I am saying is that they probably won't have that conversation in their conscious

mind but in their subconscious mind, such as it exists, they will have that conversation . . . I mean, how often have you dealt with a compliment. You get that all the time, “you’re not like all other Blacks” and it is like, wow, I can’t believe you actually said it out loud. But imagine if that came out loud, imagine what is not being said.

Alan believed that by putting faces of color before attorneys attending CLE meetings, it will also lead to further discourse around the issue of race and this much needed dialogue among White members of the Bar will tear at their deeply held stereotypes. Alan’s expectation is somewhat unrealistic because there is no guarantee that such a dialogue will happen from person to person. It will more likely be the case that White attorneys will remain silent even if the increased exposure challenges their deeply held stereotypes. At best, such challenges would be deeply personal and any manifestation of change would take a long time to surface. For most of the Black participants, immediate progress was desired.

If, in fact, CLE were to attempt to promote diversity, it would have to connect such a goal to the overall purpose and objective of CLE. How does promoting diversity advance the profession and help individual attorneys become more successful in their practice of law? William pondered this question:

So, the question is well, how is promoting diversity going to promote the profession? And we need to get more diversity here so I’d have to say you answered that question. Do you see what I mean? In other words, I’m trying to get away from political correctness and to make it bottom line, how does it help us in the profession to promote diversity . . . so, what I am saying is how is it going to help me win

this case, how is it going to help me promote the profession and ties specifically to diversity? I think that's the way it could happen to answer that. Make it a CLE type of issue . . . what's the purpose of CLE? I mean, Isn't it just to promote the profession and professionalism and to continue the legal education so that you will become a better attorney? Do you see what I mean? Well, show me how diversity is going to make me a better attorney or promote the profession.

The answer to the question was obvious to William. The purpose of CLE is to promote the profession, to provide the necessary education and training to practicing lawyers to maintain minimum skill levels which assure success in the practice. Diversity is in the best interest of all practicing attorneys because as William points out, it could directly impact the bottom line. When attorneys cannot interact and relate to their clientele successfully, business will suffer. The ability to attract future business is impacted. Further, it is in the best interest of the profession to embrace diversity because society is becoming increasingly diverse and the image of the profession could potentially be tarnished if it continues down a road which balks at diversity. Carol provided thoughts that agreed with William that diversity could be sold to the bar membership if it is tied to the bottom line or economics:

And so, I'm thinking that through the professionalism classes, the Bar emphasizes what you can do in your local community which may be Warner Robins, Georgia, to include more people of color in your Bar meetings. How can you reach out and have sessions on how you can reach out and network with minority lawyers. What can we do as a profession to include all people of color because they end

up being your next legislator, they may be the next mayor, there may be some benefit financially to them that they hadn't thought about it for economic reasons, because you know, doing it is what gets White people's attention, there's always an economic way where we are dealing with relationships, they are dealing with money. So, tailor to the money, the economics of diversity.

Carol noted that White attorneys would not be interested in fostering better relationships with their fellow Black attorneys in the bar unless there was some direct economic benefit to them; therefore, she suggested that CLE focus on the economics of diversity and institute programs which would be geared towards helping White attorneys to increase Black participation in the local bar and community.

All of the Black attorney participants noted the current CLE programming approach did not meet their needs. The Black attorneys agreed that for them CLE was just a matter of getting their required hours each year without necessarily getting anything out of their CLE experiences. They had low expectations of CLE. None of the attorneys had ever even given thought to the idea of CLE addressing the issue of race prior to their interview. This is because their expectations of CLE were such that they did not consider it as a mechanism for addressing serious issues that affect the bar or their practice of law. For them, CLE was a "card punching" experience; they were required to acquire twelve hours of continuing legal education each year, and each CLE experience represented a punch in their annual cards towards that twelve hours. Carol stated that "I don't recall any continuing education classes being devoted to race." She was surprised at that void given the significance of race to the profession of law. Linda also

noted that she had “never seen any courses offered that dealt with the issue of race.” Alan also spoke to the blatant absence of race in CLE programming:

So, to the extent that the absence of having any is a bad thing, then they don't do a good job of it. Now, when they address it, what are they going to address or how are they going to address it, it is going to be a much more difficult issue. I mean, in terms of how do you not offend somebody when you are at the Bar talking about the issue of race?

Alan noted what each of the Black attorneys had observed, he had never seen a CLE offering that addressed the issue of race. His additional comments provided a glimpse into why this may be the case. He anticipated that it would be inevitable that someone would get offended. Without doubt, he was referring to White attorneys; he anticipated that they would be uncomfortable becoming engaged in dialogue that addressed the issue of race. Nevertheless, if the purpose of CLE is to promote the bar and maintain the competency of the members of the bar, then CLE should address the issue since race does significantly impact the practice of law based on the participant's input.

The resistance that may result from the lack of comfort surrounding the issue can be addressed through mandated continuing legal education that was espoused by some of the Black participants. Currently, the bar mandates that each member of the bar must obtain twelve continuing legal education hours each year and among those twelve hours, one hour must be acquired in the areas of professionalism and ethics and at least three hours must be acquired in the area of trial practice. Mandated continuing legal education would require that the bar add an additional area to the existing three (professionalism, trial practice, and ethics) areas and require that all members of the state bar acquire a minimum number of hours in the newly designated

area. For example, the bar could add an area labeled “racial awareness” and require a minimum of three hours annually in this newly designated area. Such an approach would potentially have a two-fold effect. First, it would clearly indicate to the bar membership the significance of the issue to the profession. Just as professionalism and ethics are deemed to be highly important areas, race would receive a similar endorsement. Secondly, by designating racial awareness as a mandated area for CLE, CLE providers would be motivated to develop continuing legal education courses to address this new area. Because demand for such offerings would be assured through the mandate, such offerings would start to appear immediately in CLE provider offerings. Most of the Black attorney participants saw the mandated CLE approach as a positive step toward addressing the issue even though many anticipated some resistance from White Bar members.

CHAPTER 5

CONCLUSIONS, DISCUSSION, AND RECOMMENDATIONS

Introduction

The purpose of this chapter is to discuss the findings, conclusions, and implications of the study. There are seven major sections. They are (a) summary of the findings, (b) conclusions of the study, (c) discussion of conclusion one, (d) discussion of conclusion two, (e) implications for practice, (f) recommendations for further research, and (g) concluding comments and personal reflections.

Summary of Findings

The purpose of this study was to determine attorney perspectives on race, the legal system, and their level of support for the inclusion of race-related topics in continuing legal education requirements for the state of Georgia. The study sought to ascertain whether or not the degree and nature of the support is connected to the race of the attorney. To that end, the study is situated in critical race theory. Central to critical race theory is the use of narratives from people of color to understand the unstated assumptions of privilege and racism. Therefore, it was appropriate to use a qualitative methodology in order to give voice to the experiences of Black attorneys and to add the necessary contextual contours to the seemingly objectivity of positivist perspectives (Ladson-Billings, 1998). By giving voice to the experiences of Black attorneys, the research infused the viewpoints of Black attorneys, a racially oppressed group, into the overall efforts of critical race theorists to reconstruct a society burdened by racial hegemony (Barnes,

1990). Delgado has pointed out that there are three fundamental reasons for “naming one’s reality” in legal discourse: (a) much of “reality” is socially constructed; (b) stories provide members of out groups a vehicle for psychic self-preservation; and (c) the exchange of stories from teller to listener can help overcome ethnocentrism and the dysconscious (King, 1992) drive or need to view the world one way.

There were four themes identified in response to research question one which asked: How do White attorneys view the role of race in the legal system? These themes were as follows:

1. Racial inequality is pervasive in the legal system
2. Race influences sentencing and affects the nature of interaction between the judiciary and Black attorneys
3. Black attorneys are victims of race-based exclusion at all levels in the profession
4. Black attorneys must locate their practices near Black clientele and near a diverse judiciary

All of the White participants addressed the pervasiveness of racial inequity in the criminal justice system. In many cases, the attorneys did not have first-hand experiences to talk about; however, for them daily observations in the courtroom and in their interactions with other attorneys made it clear to them the criminal justice system unfairly targeted people of color. Similarly, observations and experiences from their practices had led many of the White attorneys to conclude that race had a direct impact on decision-making in the judiciary. Most of the White attorneys agreed that Black defendants are unfairly treated by the judiciary.

Black attorneys are the victims of race-based exclusion at almost all levels of the profession. Among the White attorneys, this exclusion was discussed in respect to four areas in

the legal profession: (a) law school admissions and overall diversity within the bar, (b) the judiciary, (c) at the bar leadership level, and (e) in the various practice specialty areas now dominated by White attorneys. This exclusion has so alienated Black attorneys that in most cases, Black attorneys seek out supportive locales such as the metropolitan Atlanta area in which to locate their law practices. Location is crucial to the success of Black attorneys since White clients will typically not seek them out for legal representation; Black attorneys rely primarily on a Black clientele for success.

There were five themes identified in response to research question two which asked: How do Black attorneys view the role of race in the legal system? These themes were as follows:

1. The judiciary, White attorneys, and jurors view Black attorneys as incompetent
2. Black attorneys are victims of race-based exclusion at all levels in the profession
3. Race influences sentencing and affects the nature of interaction between the judiciary and Black attorneys
4. Black attorneys must locate their practices near Black clientele and near a diverse judiciary
5. Jurors consider race in their deliberations

The vast majority of the Black participants addressed the issue surrounding the perception of Black attorneys as incompetent. Many expressed frustration at this issue and talked with a sense of urgency about the need of the bar to address the issue. It was generally agreed that racism and a willingness to embrace prevailing stereotypes fueled this problem. Also, many of the Black participants attributed the exclusion of Black attorneys from the prestigious law firms and other areas within the bar to the presence of racism and decision-making based on racial stereotypes.

This problem of racial exclusion was found to be significant. As a result, Black attorneys find that their voices are only heard when they create specialty race-based bar associations.

The Black attorneys asserted that White defendants and plaintiffs receive preferential treatment by judges. Many gave first hand accounts of cases they had argued in which the outcome was colored by race. Several also gave first-hand accounts in which the judiciary had disrespected them because of their race. Most Black attorneys choose to alleviate this problem by locating their practices near the metropolitan Atlanta area where the judiciary is diverse and there is a supporting racial climate. Black attorneys who locate their practices in White communities suffer from racial isolation and professional failure since White clients typically do not seek them out for legal services.

Many of the Black attorneys detailed experiences with jury nullification. Apparently, jury nullification is not an unusual occurrence for Black attorneys. Most of the Black attorneys did not view jury nullification as a negative occurrence, but rather saw it as something to be expected in response to the racially oppressive nature of our criminal justice system.

In response to research question three, the White attorneys were supportive of both the status quo and limited change in the current CLE format. These attorneys agreed that the current format was inadequate and needed to be refined especially if it is to include the issue of race. However, White attorneys were reluctant to advocate a sweeping overhaul of the current approach; they did not want to step outside of the boundaries of the current format. White attorneys recognized the importance of the topic to the profession of law; however, they did not see the urgency for CLE to address it, and in some cases, they questioned the appropriateness of CLE to address the issue.

In response to research question four, the Black attorney participants all agreed that CLE should address the issue of race and that the status quo is not acceptable. There was a decided sense of urgency among the Black attorneys about the nature of the race problem in the profession and the need of CLE to address the issue in its programming. Most of the Black attorneys agreed that even if the objective was to make the membership conscious of the issue, that objective was an acceptable start.

The findings summarized above lead to two major conclusions. The first conclusion is that Black and White attorneys agree that there is substantial racial inequity in the legal system and that racism impacts the practice of law. The second conclusion is that Black and White attorneys diverge on the extent to which they would restructure continuing legal education to address the presence of racism in the legal profession. The findings which support the first conclusion are derived from research questions one and two and the findings which support the second conclusion are derived from research questions three and four. Therefore, research questions one and two are discussed in detail below in support of conclusion one and research questions three and four and discussed in detail below in support of conclusion two.

Conclusions of the Study

As mentioned above, this study has two major conclusions. One conclusion based on the findings tied to research questions one and two is that there is substantial congruence between how Black and White attorneys view of the role of race in the profession of law. Both Black and White Attorneys agree that there is substantial racial inequities that exist in the criminal justice system and that these inequities are directly related to race.

The second conclusion is that Black and White attorneys diverge on the extent to which they would restructure continuing legal education to address the presence of the racism in the

profession. The Black attorneys were certain that CLE should address the issue of race because of its prevalence in the profession. They clearly thought that it was neglect on the part of the profession not to have addressed the issue. The White attorneys were ambivalent as to whether or not the issue of race should be addressed through CLE. While the White attorneys agreed that race had a definite impact on the criminal justice system and the legal profession, they were not willing to change the current CLE instructional paradigm in order to address the issue of race.

Discussion of Conclusion one: Black and White attorneys agree that there is substantial racial inequity in the legal system and that racism impacts the practice of law

Research questions 1 and 2 are as follows:

- How do White attorneys view the role of race in the legal system?
- How do Black attorneys view the role of race in the legal system?

There were significant surface similarities between the themes, which emerged for research questions 1 and 2 with regard to White and Black attorneys. As a matter of fact, three of the themes, which emerged, were identically entitled for each of the two groups. The identical themes were:

- Black attorneys must locate practices near Black clientele and near a diverse judiciary
- Race influences sentencing and affects the nature of interaction between the judiciary and Black attorneys
- Black attorneys are victims of race-based exclusion at all levels in the profession

The White and Black attorneys discussed the preference of Black attorneys to locate their practices in the metropolitan Atlanta area as opposed to rural areas or other smaller cities such as Athens, Georgia. The White attorneys recognized that White clients seek out White attorneys for legal services and that in predominantly White communities, this places Black attorneys at a significant disadvantage. Similarly, they seemed to recognize that issues such as discrimination

in housing and the criminal justice system also would affect a Black attorney's decision as to where to locate his or her law practice. Therefore, the White attorneys said they understood, for the most part, why Black attorneys preferred to practice in the metropolitan Atlanta area. A number of the White attorneys who addressed this issue, talked about it as if they were distant from it. These White attorneys addressed the issue through experiences that had been related to them by fellow Black attorneys. On the other hand, the Black attorneys addressed the issue experientially. The Black attorneys gave personal stories that demonstrated the existence of racial isolation in predominantly White locales. The White attorneys relied on *hearsay*, and in some cases personal observations. This explains the lack of urgency among the White attorneys with regard to the issue or race. The White attorneys chalked this reality up to what was going on in the greater society, and as such, believed change would be slow in coming. The Black attorneys were passionate in their discussion of this issue and saw it as so significant that some vowed to never practice outside of the metropolitan area unless the racial climate in those outside practice areas became more tolerable.

The Black and White attorneys both agreed that race did influence the judiciary in its decision-making. Both the Black and White attorneys spoke of personal experiences in which a client was treated differently because of the client's race. The White attorneys were in agreement that judges frequently acted on racial stereotypes. The Black attorneys thought that judges were acting out of strongly held racial views that went beyond stereotypes. For example, Alan spoke with passionate anger when he discussed this issue because it was one that he experienced so frequently. The sense of urgency was evident in his voice. Many of the White attorneys had developed a sense of reluctance in raising the issue of racial discrimination in representing clients of color because of their perception that the topic would create judicial

backlash. The White attorneys had concluded that judges were tired of hearing of the race issue, and as a result, it had become an almost taboo topic to raise. This was not the case with the Black participants. The Black participants were much more likely to challenge racism when they encountered it. One of the Black participants who worked as a prosecutor in the Atlanta area indicated that the rigor with which she pursues prosecution is absolutely colored by her perception as to whether or not police have unfairly targeted another young Black man; she indicated that she did not hesitate to move for dismissal where she thought blatant racism was present. Again, the Black attorneys communicated a sense of urgency in addressing the issue that was not evident among the White participants.

The White and Black attorneys agreed that Black attorneys were victims of race-based exclusion at all levels in the profession. White attorneys talked about the noticeable absence of Black attorneys in the large law firms and in active participatory roles in local and state bar activities. While they did believe that the absence of Black attorneys from the law firms was probably a result of racism, they could not understand the absence of Black attorneys from active participatory roles. The White attorneys attributed this to self-segregation on the part of Black attorneys. By contrast, the Black attorneys spoke experientially about their racially discriminatory experiences in interviewing with large law firms. They attributed the absence of Black attorneys from the large law firms directly to the presence of racism. Their interview responses regarding this issue were not framed as speculation, but rather as definitive and certain.

Thus, while these first three themes are similar in title, this similarity between Black and White participants was only apparent at the broadest and most superficial level. The White attorneys spoke to the themes from a distant perspective as if they were onlookers to the

problem. The Black attorneys always talked about experiences that had led them to that conclusion. They knew that racism was a problem because they had direct experiences with trying to establish law practices in White communities but to no avail. For example, Alan noted that he left the Augusta, Georgia area and came to Atlanta in order to establish his law practice because of the difficulty he had in attracting enough clients to survive in a predominantly White community. For him, this difficulty had everything to do with race. Why? Because he inherently knew that White potential clients in his Augusta community were not seeking out his services because he was Black. It had nothing to do with his expertise because he had never been given a chance. Further, when he came to Atlanta, his experience was totally different. In Atlanta, Black clients did seek out his services. As a matter of fact, he chose to locate his practice in the predominantly Black Greenbriar area of Atlanta in order to clearly identify himself as a Black attorney seeking Black clientele.

Similarly, Victor, another Black attorney, spoke about direct experiences that he had with the Judiciary in which race was an issue. He talked about clients that he represented who were given harsher sentences based on their race. How did he know that race was playing a part in the judge's decision? His conclusion was based on his past experiences with the judiciary and what he inherently knew to be true; namely, race is always a factor. Sabrina spoke directly about experiences she had with judges who called her by her first name while addressing White opposing attorneys as "Counselor"; she inherently knew that race was the motivating factor in the judge's behavior.

Alan also talked about several direct experiences that he had in looking for employment as an attorney both after law school and after he decided to relocate to the Atlanta area. In each case he noted that he was treated differently by the interviewers once they met him and

discovered that he was a Black man. He inherently knew that he was being treated differently because he was Black, and he knew that he ultimately did not get the job because he was Black. This inherent knowledge of racism on the part of Black attorneys was derived from their past personal and professional racial experiences.

In contrast, the White participants did not talk about direct experiences that they had which would exemplify the theme which they were addressing. This doesn't mean that White attorneys did not experience race. The central premise of this dissertation is that people of different races look at problems in the criminal justice system through lenses that are determined by their racial experiences in society. Critical race theory informs us that White people cannot know race as Black people know race because Black people are the oppressed group while White people hold the position of oppressor and privilege; this position of White privilege makes it impossible for the holders of privilege to experience race as Black people experience race. Both White and Black attorneys experience race; however, the experience of race for White attorneys is from the position of oppressor, while the experience for Black attorneys is from the position of the oppressed. White attorneys, by virtue of their education and their active participation in a profession charged with protecting civil liberties, cannot help but be aware of the racial disparities in the criminal justice system. This type of awareness is radically different from the awareness exhibited by the Black attorneys. White attorneys addressed the issue as if it were an academic topic; they did not have emotional attachment to the topic. The luxury of being able to emotionally detach oneself from racism in society is White privilege. While the White attorneys, in some cases, talked about experiences with Black clients who implicated race, they did not speak personally about experiences they encountered with their friends or family members. White attorneys talked about longer sentences and racial disparities only from the experiences of

others while the Black attorneys talked about such topics from their personal experiences as well. For example, Alan talked about an experience in which his mother was racially profiled as a shoplifter and Karen noted that she had to represent her husband in a Cobb County case in which he was the victim of racial profiling. For Karen, each time she was charged with prosecuting a case for the county, she could not help but think to herself (as she noted): “But for the Grace of God go my husband, father, or brother . . .” The White attorneys were always distant from the issue of race when they discussed the topic. In almost every case, the White attorneys talked about what they had observed or heard from Black attorneys in particular. For example, Sean talked about the Black attorney that he knew who had left the Athens area because he wasn’t getting the kind of business he needed to survive. He noted that he had been told that it is easier for Black attorneys to make it in the Atlanta area because it is a predominantly Black city, again he seemed distant from the issue.

Therefore, although, the White and Black attorneys addressed topics which did lend themselves to be grouped together into identically entitled themes, they arrived at these topics in a very different manner, and as such these topics had fundamentally different meanings to the two groups. The different manner in arriving at the topics and the difference in meanings is of utmost importance to critical race theory. The Black attorneys always spoke about personal experiences. This meant that their discussions were almost always accompanied by passion and a sense of urgency. Several banged their fists on their desks in addressing many of the topics. The Black attorneys were passionate in their responses because they knew that race was a problem from their past experiences and in some cases, were frustrated that nothing was being done and that the issue was being ignored by the profession. Critical race theory would embrace the Black attorneys explanation and justification for their knowledge of racism in the profession

because personal experience is a valid way of knowing from the critical race theory perspective. For those who have been silenced, telling personal experiences is a way of bringing their validity claims to the discourse table.

In contrast, the White attorneys seemed personally distant from the topics as they discussed them. This is because, they hold positions of privilege and have only experienced race from the perspective of the oppressor. Critical race theory recognizes that the subject who can take a distanced perspective on whether discrimination is occurring or not, and demand an affirmative answer before acting, is not an *unraced* subject. From a critical race theory perspective, to experience oneself as purely an innocent onlooker to acts of discrimination is to experience oneself as White (Ross, 1990).

The White attorneys must have known that the cause of the problems they were addressing was racism. Yet, they were reluctant to name it as such. Several noted that something was going on related to race. Nevertheless, the White attorneys had not been disrespected by judges because of their race, they had not been forced to relocate practices because White clients would not seek out their services, and they could not speak about experiences they had regarding discriminatory hiring practices by the large law firms. Thus, because the White attorneys had never been victimized by the occurrence of these events in their professional lives, they did not have a sense of urgency about working to eliminate the cause of these occurrences. As holders of White Privilege, the White attorneys are beneficiaries of the continued existence of racism. They would have no motivation to embrace action designed to bring about immediate change. This realization gives further support to critical race theory's assertion that racism can only be experienced by the oppressed. This is because it is an action of the oppressor. Thus, if we want to know how race is impacting society or how race is impacting

a profession such as law, we must ask the oppressed, or people of color, because only they experience the oppression of racism. As discussed above, critical race theory asserts that personal experience is a valid way of knowing. Further, in assessing the impact of racism on society or a profession, it is the preferred epistemological approach. Therefore, paying close attention to the personal narratives of Black attorneys is crucial if the state bar is to understand and fully grasp the impact of race on the practice of law. Critical race theorists, therefore, start with a different problem: not whether discrimination is taking place in the legal profession or society as a whole, but what it is like to have the possibility that one is the target of discrimination as part of one's everyday experience (either in everyday social interactions or in one's profession). Such discrimination, according to Williams (1991) is equivalent to "spirit murder" or the crushing of one's inner being on a daily basis. One aspect of this subjective experience is what Williams (1991) called epistemological vertigo. Another aspect is the awareness that one's own perceptions and experiences may at any moment be put on trial and potentially dismissed. To be part of a pattern of discrimination that we can prove at the aggregate level but never at the individual level is to be a subject the truth of whose experience is always in doubt. For critical race theory, this analytical structure is the Catch-22 of prevalent forms of anti-discrimination discourse. Critical race theory provides a way to explore the dilemma of the uncertain subject of subordination. Rather than asking, "Is Alan, a Black Atlanta area attorney, the subject of discrimination in the legal profession, or is he crazy?" critical race theory tells stories of various sorts about what it is like to be the subject of discrimination, and to constantly wonder whether one is crazy or appears so to others. Critical race theory takes seriously, in other words, the subject in crisis. Thus, if we take the responses of the Black attorneys seriously, it must be concluded that race permeates every aspect of their lives,

including their professional lives. Further, it would have to be concluded that the criminal justice system is racially-biased.

The remaining two themes for the Black attorneys and the remaining two themes for the White attorneys shared a significant degree of overlap. The remaining theme for research question one for White participants is: Racial inequality is pervasive in the legal system. The remaining two themes for research question two for Black attorneys are: (a) the judiciary, White attorneys, and jurors view Black attorneys as incompetent and (b) jurors consider race in their deliberations. By far, the widest reaching theme for the White attorneys was the theme of “Racial Inequality is Pervasive in the Legal System.” All of the White attorneys seemed to recognize the existence of racial inequality throughout the legal system, sometimes even within the profession itself. However, none of them decisively and affirmatively name the cause. They were willing to say that race was possibly playing a part but often used it as one of many other variables in what they deemed to be a complex issue in the greater society. The Black attorneys almost always saw race as the cause of the issues being discussed. Again, the Black attorneys knew that race was a factor. Differences in outcomes, they attributed to jurors’ blatant consideration of race. The Black attorneys specifically addressed the existence of jury nullification as an issue that is frequently encountered. Only one White attorney addressed this issue. This may be because Black attorneys know what to look for since race is a part of their everyday lived experiences. As mentioned earlier, White attorneys do experience race but only from the perspective of the oppressor. This position of privilege allows them to always see themselves as the distant onlookers of the phenomenon of racism.

In discussing topics related to the theme “Racial Inequality is Pervasive in the Legal System,” it was very evident that the White attorneys were distant from the problem. As a

matter of fact, after analyzing the data, I concluded that the White attorneys addressed the various topics contained in this theme out of what they perceived to be necessity. In other words, they had concluded that in most cases, it had to be evident to everyone that there is a racial problem in the criminal justice system, if for no other reason than because of the obvious racial disparities that are well known. Therefore, to not acknowledge that which is readily observable, would place the respondent under a cloud of suspicion. Thus, it seemed as if each of the White participants moved quickly to discharge this obligation by acknowledging that there was an obvious problem with the system. However, most were unwilling to attribute the cause to blatant racism.

In order to determine the impact of race on society, Delgado (1984) has argued that it is necessary to listen to the voices of people of color. This is because people of color speak experientially about race. They do not speak about what they have observed in most cases; but rather, they speak about what they have lived and experienced. Similarly, if the legal profession would like to examine the extent to which race is a problem in the profession, the profession must give voice to the experiences of the attorneys of color. White attorney participants almost always gave examples from other colleagues' experiences; they distanced themselves from the problem of racism. Only those White attorneys who practiced in criminal law talked about examples they had experienced by representing clients of color. To the contrary, almost all of the Black participants talked about direct experiences. Even those attorneys who practiced in areas such as labor law in which race had little or no impact on their practice, spoke about experiences from their private lives or made observations about the practice and the impact of race because they inherently knew that race was always an issue. This explains why Black participants spoke with urgency while the White participants were more reflective and reserved

in their responses as to how the bar should respond. Alan Freeman (1996) has asserted that racial discrimination can be understood from either the perspective of the victim or the perspective of the perpetrator. That is, from the perspective of the oppressed or the oppressor. The former, a viewpoint referred to by Matsuda (1987) as looking to the bottom, focuses on the actual social conditions of members of a perpetual underclass. The latter, indifferent to the condition of the victim, only takes into account what particular perpetrators have done or are doing to some victims. Freeman argues that our approach today is hopelessly embedded in the perpetrator perspective or the perspective of the oppressor. Giving voice to the experiences of attorneys of color embraces the perspective of the victim and would give the bar a realistic view of the impact of race on the profession of law. To attempt to assess the extent of the impact of race through presumably rational inquiry only serves to perpetuate the problem. Bell (1995) has noted that when society insists that abstraction be put forth as rational or objective truth, society smuggles the privileged choice of the privileged to depersonify their claims and then pass them off as the universal authority and the universal good. In order to counter such abstraction, critical race theorists advance knowledge of race which is experientially grounded from the perspective of oppressed. Critical race theorists believe that such an approach gives a much clearer view of race and its impact on society.

Discussion of Conclusion two: Black and White attorneys diverge on the extent to which they would restructure continuing legal education

Research Questions 3 and 4 are listed below:

- How Do White Attorneys View the Efficacy of Continuing Legal Education in Addressing the Role of Race in the Legal System?
- How Do Black Attorneys View the Efficacy of Continuing Legal Education in Addressing the Role of Race in the Legal System?

A comparison of the findings related to research questions 3 and 4 revealed the greatest degree of difference. While both White and Black attorneys all acknowledged that CLE had not addressed race in the past, they did not agree on whether or not it was absolutely imperative that CLE start addressing race in the future. The White attorneys seemed to support the status quo. While they saw the usefulness in addressing the issue because of its significance to the practice of law, they questioned the efficacy in addressing the issue through CLE. Many of the White attorneys concluded that the issue doesn't fit, given the current CLE approach. Even further, the White attorneys were less likely to challenge the current approach.

On the other hand, the Black attorneys were much more confrontational in addressing the CLE issue. Several of the Black attorneys said that the issue must be addressed by CLE because of its relevance to the profession. Further, the Black attorneys were realistic in their expectations of the outcome from a CLE experience in which race is to be addressed. The Black attorneys were contented with consciousness-raising as an objective. They thought this was at least a start toward eliminating the current atmosphere of silence.

Janice and Dave were the only two White attorneys who were engaged in exclusive criminal defense law practices. Elizabeth had a mixed practice which included some criminal defense. These three attorneys would arguably have had the highest degree of interaction with people of color as a result of their practices. Five of the other White attorneys, James, Patrick, Donna, Paul, Sean, and Rose were engaged in practices which included a significant amount of family law; this meant that they, at least occasionally, were called upon to interact with clients of color. The significance of this observation lies in the importance of political-socio ideology in framing a person's reaction to racism. I would argue that Janice and Dave are probably the two most liberal White attorneys who participated in this study because their practices rely on Black

clientele for their success; in order to successfully represent and attract clients of color they must be able to relate to these clients' socio-economic condition in society or at least project the perception of being able to understand and relate. Therefore, it is likely the case that White attorneys whose practices include criminal law will hold moderate to liberal socio-political views. Similarly, those White participants who practice in areas like family law in which they have frequent interaction with clients of color are likely to be liberal-to-moderate at most in their socio-political ideology. Crenshaw (1988) has argued that there is very little difference between conservative and liberal discourse on race-related law and policy. Crenshaw (1988) explains that there are two properties in law that applies to anti-discrimination law: expansive and restrictive properties. Expansive properties stresses equality as outcome relying on the courts to eliminate the effects of racism. Restrictive properties treat equality as a process; their focus is to prevent any future wrongdoing. Crenshaw (1988) contends that both expansive and restrictive properties currently exist in law; expansive properties are embraced by conservatives and restrictive properties are embraced by liberals. Nonetheless, both have failed to correct the racial injustices of the past and both have served to simply perpetuate the status quo. The reaction of the presumably liberal White attorneys in this study to the efficacy of the bar in addressing the issue of race speaks to the problem with the restrictive properties approach. This is why critical race theory insists on a critique of liberalism (Ladson-Billing, 1998); the current liberal perspective on the efficacy of CLE is flawed because it fails to understand the limits of the current paradigm to serve as catalyst for social change because of its emphasis on incrementalism. Critical race theory argues that racism requires sweeping changes, but that liberalism has no mechanism for such change. Currently, liberal legal practices support the painstakingly slow process of arguing legal precedents to gain citizen rights for people of color (Delgado, 2000). This incremental

approach minimizes the threat to White liberals who maintain that they support change. Therefore, White attorneys will not support sweeping change; White attorneys will only push for change to the extent that it does not threaten their career comfort and security. Indeed, White criminal attorneys have created and maintained successful criminal law practices even though the criminal justice system, as has been pointed out in this study, is apparently inherently biased and discriminatory against people of color. Thus, to some extent these White attorneys depend on the continued existence of a biased and discriminatory criminal justice system for their career success. To advocate radical and sweeping change would be to threaten their very livelihood. These attorneys were only supportive of change to the extent that it advanced their own interests. As successful criminal defense attorneys, they are expected to advance the cause of the disenfranchised criminal defendant of color. But they were only willing to go but so far. They hid behind the current format of CLE as a restrictive device that doesn't allow for the change necessary to adequately address race. Bell (1993) has called this the interest convergence principle in critical race theory. This principle asserts that White people will promote racial advances for Blacks only when they also promote White self-interest. This explains the seemingly inaction of the White attorneys after openly acknowledging the problem of race in the profession. White attorneys will only support sweeping change when there is an interest for them that will be advanced through such changes. Else, they have no motivation to support such changes especially since they benefit from racial oppression as the holders of White privilege. Bell notes that the framers of the U.S. Constitution chose the rewards of property over justice, and that similarly, White people, including White attorneys, will not support civil rights policies that may threaten White social status. This explains the reservation in the White attorneys' responses as well as the limited support for change offered by those attorneys who practiced in

areas in which they relied on Black clientele for success. The reality is that White attorneys are part of the problem of racism in society and in the profession. White attorneys are in the position of oppressor and Black attorneys are members of the oppressed group. White attorneys as beneficiaries of White privilege have no motivation to support a sweeping overhaul of CLE in order to address the issue of race in the profession. It is impossible for White attorneys to see themselves as real agents of change. Real change requires dismantling a system in which they hold privileged positions.

Critical race theory was the ideal lens to use in analyzing the data in this study. It provided explanations for the findings that are impossible to refute. Critical race theory illuminates the way Black attorneys look at inequity caused by racism, and it illuminates how they view education as a solution to that racism. From the data analysis, it can be concluded that positionality in society is the determining factor in how a person will view inequities perpetuated by race and whether or not they will view education as a viable tool to be used in addressing race and inequities in society

Implications for Practice

The failure of the profession to address racism is partly related to the continued reliance on a functionalist approach in program planning. This approach places emphasis on technical knowledge and expertise in the practice. This approach has become a shield behind which White members of the bar now hide; it provides an excuse for why race cannot be addressed since the primary purpose of CLE under this approach is to offer programs which hone technical expertise and maintain a minimum level of technical competency. Under the functionalist approach, it would be inappropriate to address issues such as race because it is not readily apparent that doing so would affect technical expertise and knowledge.

This study indicates that technical legal expertise and knowledge are not applied in a value-neutral manner. Attorneys make decisions which go beyond technical knowledge and very frequently these decisions are race-based. For example, without doubt, race is frequently a variable in jury selection. Similarly, as the findings indicated, in some cases, race influences the strategy that an attorney chooses to use during a trial. This suggests that the program planners of CLE should shift from the functionalist approach to one that would allow them to respond to the complexities in the practice of law and to specifically address issues such as race. This would require a paradigm shift to the critical approach as espoused by Cervero (1988). The critical approach shifts attention away from what professionals have in common - such as education, status, and knowledge - to how they use these common characteristics for different social purposes (Murphy, 1986). This study has shown that in order to address the significant issues which impact the practice of law through CLE, a paradigm shift is needed away from the functionalist perspective to the critical perspective. Such a paradigm shift would allow program planners in continuing legal education to embrace anti-racist education tactics in its planning and delivery. It is my belief that the impact of race on the practice of law is so significant that anti-racist education is needed in order to change the current culture in the profession which is supportive of the status quo. Anti-racist education is designed to rupture the status quo; it grounds itself in the lived experiences of the oppressed and uses such experiences as the “voice” in communicating the existence of racial problems to the dominant culture. It should be noted that such a paradigm shift would not mean that the current CLE substantive topics would no longer be addressed. All of the current topics would continue to be addressed; however, race would become the context in which each topic is addressed. For example, in discussing the topic of Driving Under the Influence (DUI) defense in a CLE offering the format would be

restructured to address the impact of race on the defense strategy. In addressing the impact of race, the CLE planners would look to attorneys of color to speak directly to the issue based on their past personal and professional experiences.

This study also suggests that program planners should not treat an entire profession as a monolithic group in assessing the impact of race on the group. In order to determine what the significant race issues are, it is necessary to solicit input from professionals of color separately from the White professionals. This is because the lived reality of racial experiences is very different from the perceived reality of White professionals as this study has shown. White professionals can only speak from their observations and from hearsay, or from what they have heard people of color say about race and its impact or similarly, from what they have heard their fellow White bar members say regarding the issue. White professionals cannot speak from experience; this explains why White professionals do not speak with a sense of urgency when discussing the issue and devising solutions to address the problem. In contrast, Black professionals speak from their personal experiences in most cases and almost always speak with a sense of urgency regarding the issue.

Recommendations for Further Research

This study was limited to practicing attorneys in the State of Georgia who were members of the Georgia State Bar. As such, the findings are limited to the perceptions of lawyers and cannot be used to draw conclusions about the perception of race among judges. While the Black and White practicing attorneys who participated in this study did implicate the judiciary, it cannot be concluded that the perceptions and views expressed by the study participants would be the same for members of the judiciary. Further, members of the judiciary are not subject to the CLE mandate for practicing attorneys; rather, members of the judiciary are required to engage in

continuing judicial education. It is not known whether or not the topic of race has even been addressed or is adequately addressed from the perception of current members of the judiciary. Further, it is not known whether or not this perception would differ based on the race of the judge. Therefore, it is recommended that this study be replicated for members of the judiciary in the state of Georgia.

The Black and White practicing attorneys who participated in this study also implicated law enforcement as being a significant part of the problem in the criminal justice system. Many noted that racial profiling is an ongoing problem and that police officers frequently treat Black defendants differently than White defendants. However, it is not known whether or not law enforcement officers and personnel are conscious of this problem and whether or not racial sensitivity or race-related topics are included in continuing education requirements for law enforcement personnel; nor is it known whether or not law enforcement personnel support the inclusion of race-related topics in their continuing education requirements. Therefore, it is recommended that this study be replicated among law enforcement personnel.

Additionally, since this study was limited to the active members of the state Bar of Georgia, it cannot be concluded that the findings are representative of the views of other state bar members. The South has historically been a hotbed for race because of its history with Jim Crow. Further, the metropolitan Atlanta area has a Black population which exceeds the national average. Thus, it cannot be concluded that race would have the same impact or significance for attorneys who are members of other state bars. Therefore, it is recommended that this study be replicated in other state's to determine the impact of race and its significance from the perception of those states' attorneys.

The topic of race is raised almost daily in the American media. Race permeates every segment of our society. Yet, most of the professions have not assessed the significance of race to their membership nor have they attempted to include it as a potential topic when conducting needs assessments for the purpose of continuing professional education. This study suggests that the occurrence of racism in society does have a definite impact on the professions. In order to determine the significance of this impact on the individual professions, it will be necessary to replicate this study in the individual professions such as medicine and accounting. Do White patients seek out White doctors for healthcare? Must Black doctors locate their practices in predominantly White areas in order to be successful in private practice? Should the topic of race be addressed in continuing education for medical doctors? Similarly, must Black accountants locate their private practices in predominantly Black areas in order to be successful? What is the significance of race to the profession of accounting? In order to find the answers to these questions, it is suggested that this study be conducted across the board in as many professions as possible. To do so will foster meaningful dialogue and possible solutions to America's ongoing race problem.

Lastly, this study was based on a small sample of Black and White attorneys using a qualitative research methodology. Thus, we cannot generalize the results beyond the participating attorneys in this study. In order to investigate the existence of these findings across the entire profession of law in the state of Georgia, it is recommended that a broader quantitative study be undertaken.

Concluding Comments and Personal Reflections

Continuing Legal Education in Georgia has failed to include race in its offerings even though the data in this study show that most members of the Bar, both Black and White, believe

that race significantly impacts the profession and that CLE should address the issue. In accord with traditional social science and education research, the above implications do not move beyond the data. However, as a Black man and a member of the State Bar of Georgia who has personally experienced and witnessed racism in the greater society, as well as in the profession, I feel obligated to move beyond the implications discussed above and to offer reflections from my personal knowledge. Else, I would become a participant of my own oppression by allowing research traditions to silence my voice.

I know from personal experience that my race makes me a target of the criminal justice system in this country. As I undertook the preparation necessary to engage in this study, I was amazed at the quantity of data available which documented the existence of the racial problem in the American criminal justice system. Seemingly, almost everyone is aware of the problem and the dominant culture is comfortable with the status quo. Every participant in this study acknowledged the existence of race as an issue in the profession of law in the state of Georgia. While the Black and White attorneys own the problem in different ways, the existence of the problem cannot be refuted. Given that 100% of the participants acknowledged the problem, how can the profession continue to ignore the problem? Are we willing to acknowledge the problem academically and intellectually and not acknowledge it through necessary action? Education is about making people aware of issues and can be a mechanism through which change can be implemented. For the sake of social politeness and false harmony, the profession has been reluctant to confront the issue head-on. The time has come to abandon social politeness and false harmony because such politeness serves only to protect the status quo and impede progress. The data indicate that the criminal justice system is rotten at its core; race must be addressed.

The continued failure of the profession to address the issue of race is an indictment on its credibility as the protector of civil liberties in our society.

The Black members of the Bar must become more aggressive and resolved in their commitment to bring about change within the profession and the criminal justice system. One of the surprising observations that I made after analyzing the data from this study was that the Black attorneys expressed a seemingly lack of agency regarding the race problem in the profession. While the lack of agency on the part of the White attorneys should have been expected because of the reality of White privilege, the lack of agency on the part of the Black attorneys was perplexing. Whatever the reason for its existence, the Black members of the Bar must become the agents for change. While, we may not be able to immediately change the mainstream bar associations, we can start by utilizing the mechanisms over which we have some control in order to begin to address the issue of race. Namely, become more aggressive in Black bar associations such as the National Bar Association and the Gate City Bar Association in naming the prevalence of racism in the profession and society and offering extensive alternative CLE programs designed to address the reality of race in the profession. This visibility will go a long way in keeping the issue of race on the discourse table and make it more difficult for the mainstream bar associations to continue the conspiracy of silence which now exists. Further, Black law firms can also begin to do the same thing by offering CLE programs sponsored by the firms designed to address the reality of race in the profession. If the Black bar associations and the Black law firms continue to remain silent regarding the issue of race in the profession then they will have become part of the problem and even more troublesome, they will have become co-conspirators in their own oppression. The time has now come for change. Black attorneys as

members of the oppressed racial group, have an obligation to look beyond career and professional security and embrace the risk necessary to bring about change.

That Justice is a blind goddess

Is a thing to which we Blacks are wise

Her bandage hides two festering sores

That once perhaps were eyes.

(Langston Hughes - -c.1928)

REFERENCES

Abdo, N. (1993). Race, gender and politics: The struggle of Arab women in Canada. In Linda Carty (ed.), *And still we Rise: Feminist political mobilizing in Contemporary Canada* (pp. 73-98). Toronto, Canada: Women's Press..

AICPA, and NASBA (1998). *Digest of state accountancy laws and state board regulations, 1998*. New York: American Institute of Certified Public Accountants.

Allen, T. Class struggle and the origin of racial slavery. The invention of the White race, *Radical American*. May-June, vol. 9, Number 3b. The invention of the White Race. Vol 1 (1994) and Vol. 2 (1997). New York: Verso Press.

Barnes, R. (1990). Race consciousness: The thematic content of racial distinctiveness in critical race scholarship. *Harvard Law Review*, 103, 1864-1871.

Becker, H. S. (1962). The nature of a profession. In N.B. Henry (Ed.), *Education for the Professions*. Chicago: University of Chicago Press.

Bell, D. (1987). *And we Are not saved: The elusive quest for racial justice*. New York: Basic Books.

Bell, D. (1992). *Faces at the bottom of the well*. New York: Basic Books.

Bell, D. (1995), Who's afraid of Critical Race Theory. *University of Illinois Law Review* 1995: 901.

Berube, M. S. (Ed.). (1985). *American heritage dictionary: 2nd College Edition*. Boston: Houghton Mifflin.

Bogdan, R. & Biklen, S. (1992). *Qualitative research for education: An introduction to theory and methods*. Boston, Massachusetts: Allyn and Bacon.

Bonnett, A. (1996). Anti-racism and the critique of white identities. *New Community*, 22(1), 97-110.

Bright, S. B. (1995). Discrimination, death and denial: The tolerance of racial discrimination in infliction of the death penalty. *Santa Clara Law Review*. 35(2).

Bryman, A. (1992). Quantitative and qualitative research: Further reflections on their integration, in J. Brannen (Ed.), *Mixing methods: Qualitative and quantitative research* (pp. 57-78). Aldershot: Avebury,.

Bureau of Labor Statistics. (2002). *Median usual weekly earnings of full-time wage and salary workers by detailed occupation and sex*. Bureau of Labor Statistics, U.S. Department of Labor [on-line]. Available: <http://www.bls.gov> (2002, November 22).

Carr, W., and Kemmis, S. (1986). *Becoming critical*. London: Falmer Press.

Cervero, R. M. (1988). *Effective continuing education for professionals*. San Francisco: Jossey-Bass.

Cervero R. M. and Wilson, A. L. (1994a). *Planning responsibly for adult Education: A guide to negotiating power and interests*. San Francisco: Jossey-Bass.

Cervero, R. M. and Wilson, A. L. (1994b). The politics of responsibility: A theory of program planning practice for adult education. *Adult Education Quarterly*, 45, 249-268.

Cervero, R. M. and Wilson, A. L. (1996). Paying attention to the people work when planning educational programs for adults. In R. M. Cervero and A. L. Wilson (Eds.), *What really matters in adult education program planning: Lessons in negotiating power and interests*

(pp. 5-12). *New Directions in Adult and Continuing Education*, No. 69, San Francisco: Jossey-Bass.

Clark, C. and O'Donnell, J. (Eds.) (1999). Owing and disowning a racial identity: Becoming and unbecoming white. In Giroux, Henry (Eds.) *Critical studies in education and culture series*. Westport, Connecticut: Bergin & Garvey.

Cotter, P. R., Cohen, J., & Coulter, P. B. (1982). Race-in-interviewer effects in telephone interviews. *Public Opinion Quarterly*, 46, 278-284.

Crenshaw, K., Gotanda, N., Peller, G., & Thomas, K. (1995). Introduction. In K. Crenshaw, N. Gotanda, G. Peller, & K. Thomas (Eds.) *Critical Race Theory: The key writings that formed the movement*. New York: Free Press.

Crenshaw, K. (1988). Race reform and retrenchment: Transformation and legitimation in anti-discrimination law. *Harvard Law Review*, 101, 1331-1387.

Criminal Justice Report (2001). Leadership conference on civil rights [Online]. Available: <http://www.aclu.org> (2001, April 11).

Darkenwald, G. G., and Merriam, S. B. (1982). *Adult education: Foundations of practice*. New York: Harper & Row.

Dei, G. (1996). *Anti-racism education theory and practice*. Halifax, Nova Scotia: Fernwood Publishing.

Delgado, R. and Stefancic, J. (Eds.) (2001). *Critical Race Theory: The cutting edge*. Philadelphia: Temple University Press.

Delgado, R. and Stefancic, J. (2001). *Critical Race Theory: An introduction*. New York: New York University Press.

- Delgado, R. (Ed.) (1995a). *Critical Race Theory: The cutting edge*. Philadelphia: Temple University Press.
- Delgado, R. (1995b). Introduction. In R. Delgado (Ed.). *Critical Race Theory: The cutting edge*. Philadelphia: Temple University Press.
- Denevi, E. (2001). Whiteness. *Independent School*. 61(1), pp. 100-109.
- Denzin, N.K., (1978). *The research act: A theoretical method to sociological methods*. New York: McGraw-Hill.
- Dowd, M. (1996, November 21), The sound and the jury, *New York Times*, A29.
- Ellsworth, E. (1989). Why doesn't this feel empowering? Working through the myths of critical pedagogy. *Harvard Educational Review*. 59(3), 297-324.
- Essed, P. and Goldberg, D. (Eds.) (2002). *Race critical theories*. Massachusetts: Blackwell Publishers, Inc.
- Franklin, J. H. (1990). *Race and history: Selected essays 1938 – 1988*. Louisiana: Louisiana State University Press.
- Freeman, A. (1996). Legitimizing racial discrimination through antidiscrimination law: A critical review of supreme court doctrine. pp. 29-46 in *Critical Race Theory: The key writings that formed the movement*, edited by K. Crenshaw, N. Gotanda, G. Peller, and K. Thomas. New York: The New Press.
- Ferrante, J. and Brown, Jr., P. (1998). *The Social construction of race and ethnicity in the United States*. New York: Addison Wesley Educational Publishers, Inc.
- Friedson, E. (1986). *Professional powers*. Chicago: University of Chicago Press.
- Frankenburg, R. (1993/1995). *White women, race matters: The social construction of Whiteness*. University of Minnesota.

- Georgia Bar Association. (2002, 12-14-02). *The Georgia Bar Association* [on-line]. Available: <http://www.gabar.org> (2002, December 14),
- Glaser, B. G. & Strauss, A. (1967). *Discovery of grounded theory: Strategies for qualitative research*. Chicago: Aldine Publications.
- Gordon, R. (1990). New developments in legal theory. In D. Kairys (Ed.). *The politics of law: A progressive critique*, pp. 413-425. New York: Pantheon Books.
- Gordon, R. (1987). Unfreezing legal reality: Critical approaches to law, *Florida State University Law Review* 15(195).
- Guy-Sheftall, B. (1993, April). *Black feminist perspectives on the academy*. Paper presented at the annual meeting of the American Educational Research Association, Atlanta.
- Habermas, J. (1971). *Knowledge and human interests* (J.J. Shapiro, trans) , Portsmouth, N.H.: Heinemann Educational Books.
- Hatchett, S. and Schuman, H. (1976). White respondents and race-of-interviewer effects. *Public Opinion Quarterly*, 39. pp. 523 – 528. Winter, 1975–76.
- Hill, M. (Ed.) (1997). *Whiteness: A critical reader*. New York: New York University Press.
- Holt, M., Steer, P. J., & Clark, R. L. (1992). A critique of two studies considering the continuing professional education of accountants. *The Journal of Continuing Higher Education*, 40(1), 9-12.
- Hooks, B. (1990). *Yearning: Race, gender, and cultural politics*. Boston: South Press.
- Horwitz, M. (1994). *The transformation of American law 1970-1960: The crisis of legal orthodoxy*. Oxford, England: Oxford University Press.

- Houle, C. (1980). *Continuing learning in the professions* (1st ed.). San Francisco: Jossey-Bass.
- Issacs, J. (1987). *Power and Marxist theory: A realist view*. Ithaca: Cornell University Press.
- Imel, S. (1995). *Race and gender in adult education*. Trends and Issues Alert.
- Jensen, R. (1998, July 19). White privilege shapes the U.S. *The Baltimore Sun*, p. C-1.
- Kennedy, D. (1998). *A critique of adjudication: (Fin De Siecle)*. Cambridge, Massachusetts: Harvard University Press.
- Khayatt, D. (1994). The boundaries of identity at the intersections of race, class and gender. *Candian Woman Studies: Racism and Gender*. 14(2): 6-13.
- Kidder, L. H., & Fine, M. (1987). Qualitative and quantitative methods: When stories converge. In M. M. Mark & R. L. Shotland, (Eds.), *Multiple methods in program evaluation, new directions for program evaluation*, pp. 57 – 75. San Francisco: Jossey-Bass.
- King, J. (1992). Diaspora literary and consciousness in the struggle against miseducation in the Black community. *Journal of Negro Education*. 61, 317-340.
- Knowles, M. S. (1980), *The modern practice of adult education: From pedagogy to andragogy*. (2nd ed.) New York: Cambridge Books.
- Johnson-Bailey, J. (2001). The road less walked: A retrospective on race and ethnicity in adult education. *International Journal of Lifelong Education*. 20(1-2), 89-99.
- Ladson-Billings, G. (1998). Just what is Critical Race Theory and what's it doing in a nice field like education? *International Journal of Qualitative Studies in Education*, 11(1), 7-24.
- Ladson-Billings, G. (1999). Just what is critical race theory, and what's it doing in a "nice" field like education? In L. Parker, D. Deyhle, & Villenas (Eds.), *Race is ...race isn't*:

Critical race theory and qualitative studies in education (pp. 7-30). Boulder, CO: Westview Press.

Lee, E. (1994). Anti-racist education: Panacea or alliative. *Orbit* 25(2): 22-5.

Livert, D., et. al., (1998) Do interviewer-respondent race effects impact the measurement of illicit substance use and related attitudes?, *Public Opinion Quarterly*.

Lopez, I. (1995). The social construction of race. In Delgado, R. (Ed.), *Critical Race Theory: The cutting edge*. Philadelphia: Temple University Press.

MacKinnon, C. (2003). Women and law: The power to change. In Morgan, R. (Ed.), *Sisterhood is forever: The women's anthology for the a new millennium*, pp. 447-55. New York: Washington Square Press.

Markowitz, M. & Jones-Brown, D. (Eds.) (2000). *The system in black and white: Exploring the connections between race, crime, and justice*. Westport, CT: Greenwood Publishing Group, Inc.

Maykut, P. & Morehouse, R. (1999). *Beginning qualitative research: A philosophic and practical guide*. London, UK: The Falmer Press.

McIntosh, P. (1996). White privilege and male privilege: A personal account of coming to see correspondences through work in women's studies. In Delgado, R. and Stefancic, J. (Eds.) *Critical White studies: Looking behind the mirror*. Philadelphia: Temple University Press.

Merriam, S. (1998). *Qualitative research and case study applications in education*. San Francisco, California: Jossey-Bass

Merriam, S. and Simpson, E. (2000). *A guide to research for educators and trainers of adults*. Florida: Kreiger Press.

Miles, R. (1982). *Racism and migrant labour*. London: Routledge and Kegan Paul.

- Miles, R. (1989). *Racism*. London: Tavistock.
- Milto, A. (1999). *Common land-uncommon ground: An exploration of racial identity development as a critical factor for Black And White planners of cultural diversity programs*. Unpublished doctoral dissertation. The University of Georgia, Athens.
- Nowlen, P. M. (1988). *A new aproach to continuing education for business and the professions: The performance model*. New York: MacMillan.
- Omi, M. and Winant, H. (2002). Racial formation. In Essed, P. and Goldberg, D. (Eds). *Race Critical Theories*. Massachusetts: Blackwell Publishers, Inc.
- Patton, M. Q. (1990). *Qualitative evaluation and research methods*. Newbury Park, California: Sage.
- Pennington, F., and Green, J. (1976). Comparative analysis of program development in six professions. *Adult Education*, 27, 12-23.
- Perdue, K. J. (1999). *Deterrents to participation in web-based continuing professional education for Certified Public Accountants in Georgia*. Unpublished doctoral dissertation, The University of Georgia, Athens.
- Pitts, L. (2002, December 4), Racial truth that ought to be self-evident isn't, *The Atlanta Journal-Constitution*, p. A21.
- Punch, K., F. (1998). *Introduction to social research: Quantitative & qualitative approaches*. Thousand Oaks, California: SAGE Publications, Inc.
- Queeney, D.S., and English, J.K. (1994). *Mandatory continuing education: A status report*. Columbus, OH: ERIC Clearinghouse on Adult, Career, and Vocational Education.
- Reed, C. (1994). The omission of anti-semitism in anti-racism. *Canadian Women Studies*. 14(2): 68-71.

- Ross, T. (1990), Innocence and affirmative action, 43 VAND. L. REV. 297, 299-300.
- Schaeffer, N. C. (1980). Evaluating race-of-interviewer effects in a national survey. *Sociological Methods and Research*, 8, 400 – 419.
- Scott, M. M. (1991). Naturalistic research: Application for research and professional practice with college students. *Journal of College Student Development*, 32, p. 416 – 423.
- Simmons, E. (1994). Sensitivity trainers and the race thing. *New Internationalist* 260: 26-27.
- Shimberg, B. (1982). *Occupational licensing: A public perspective*. Princeton, N.J.: Educational Testing Service.
- Southern Center for Human Rights. Retrieved February 27, 2004, from <http://www.schr.org>.
- Strauss, A., & Corbin, J. (1992). *Basics of qualitative research: Grounded theories, procedures and techniques*. Newbury, CA: Sage.
- Streer, P. J., Clark, R. L., & Holt, M. E. (1995). Assessing the utility of continuing professional education for Certified Public Accountants. *Research in Accounting Regulation*, 9, 211-222.
- The Criminal Justice Coordinating Committee. *Crime statistics*. Retrieved December 17, 2002, from <http://www.ganet.org/cjcc/crimestats.html>.
- Tidell, E. J. (1995). *Creating inclusive adult learning environments: Insights from multicultural education and feminist pedagogy*. Information Series No. 361.
- Taylor, E. (1998). A primer on critical race theory. *Journal of Blacks in Higher Education*. 19, p. 122-24.

Tesch, R. (1990). *Qualitative research: Analysis types and software tools*. Basingstoke, Hants: Falmer.

Tyler, R. W. (1949). *Basic Principles of Curriculum and Instruction*. Chicago: University of Chicago Press.

Unger, R.M. (1986). *The critical legal studies movement*. Cambridge, Massachusetts: Harvard University Press.

University of Missouri-Kansas City, School of Law, Famous Trials Website (2000, October). The O.J. Simpson trial: The jury. Retrieved February 11, 2003, from the University of Missouri Website: <http://www.law.umkc.edu/ftrials/simpson/jurypage.html>.

Vollmer, H. M., and Mills, D .L. (Eds.). (1966). *Professionalization*. Englewood Cliffs, N.J.: Prentice-Hall.

West, C. (1993), *Keeping faith: Philosophy and race in America*. New York: Routledge.

Wildman, S. and Davis, A. (1996). Making systems of privilege visible. In Delgado, R. and Stefancic, J. (Eds.), *Critical White studies: Looking behind the mirror*. Philadelphia: The Temple University Press.

Williams, P. J. (1991). *The alchemy of race and rights*. Boston, Massachusetts: Harvard University Press.

Williams, P. J. (1987). Spirit-murdering the messenger: The discourse of fingerpointing as the law's response to racism, 42 U. MIAMI L. REV. 127, 129.

Williams, P. J. (1997). *Seeing a color blind future: The paradox of race*. New York: Noonday Press.

APPENDIX A
PILOT STUDY FINDINGS

Pilot Study Findings

Purpose and Research Questions

The purpose of the pilot study was to investigate the role of race in the practice of law as perceived by Black lawyers. In order to accomplish this broad purpose, two specific research questions were posed:

1. In what ways does race affect the practice of law for Black attorneys?
2. What are the possible roles of continuing legal education and more generally, the bar, in addressing race in the legal profession?

Methodology

In order to answer the above research questions, I employed a qualitative research approach. Data for the study were collected from a convenience sample of Black members of the state bar of Georgia. Black attorneys are the ideal group to address the issue of race in the legal profession because they straddle two groups: they are members of a historically oppressed racial group and they are members of the profession charged with carrying out society's laws which protect individuals from racial discrimination.

Sample Description

An attempt was made to locate attorneys from many different practice areas and backgrounds to participate in this study. A group of seven Black attorneys agreed to participate in the study. The participants included five men and two women. Participants' ages ranged from 30 to 50 years of age. Three of the participants worked for well-known law firms in the city of Atlanta; of these three, two practiced primarily in the area of labor relations law, and one was a partner and had a general civil practice. One of the participants worked for the United States Attorney's office for the Middle District of Georgia, and one worked as County District

Attorney. The participants were assigned pseudonyms for the purposes of the pilot study. These participants were as follows:

- Robert Black male U.S. Attorney Office
- Victor Black male Private Practice
- Larry Black male Law firm partner
- Sherry Black Female County District Attorney
- Donald Black male Labor and employment law firm
- Brenda Black Female Private Practice
- Ted Black male Labor and employment law

Pilot Study Data Collection and Analysis

Data were collected using semi-structured interviews. Most of the semi-structured interviews were conducted in person at the law offices of the participants; some were conducted over the telephone where face to face interviews were not possible due to time constraints. Participants were asked by the researcher to voluntarily participate in the study and submit to a 30 to 45 minute semi-structured interview and to answer questions and express their opinions regarding the importance of race to the practice of law. The invited participants were provided with a brief description of the study and its purpose. The interviews were conducted privately at a location mutually selected by the participant and the researcher. In most cases, the law office of the participant was the most convenient venue for the interview. The interviews were recorded and later transcribed by the researcher. The participants were asked to give a brief overview of their legal career– tracing the start of the their legal careers from law school to present. Interview data were essentially derived from three basic questions, with probing questions being added as appropriate. These questions were as follows:

1. Based on your practice experience, how important is race to the practice of law in Georgia?
2. Cite a specific example from your professional experience in which race was important to the outcome? In the Courtroom? Between you and the judiciary? Between you and a fellow bar member(s)? Between you and a client?
3. What can the Bar and Continuing Legal Education do to improve things?

Data originating from the interviews were analyzed via constant comparative analysis (Flick, 1998; Glaser, 1969), specifically using coding procedures to identify common themes in responses (Bogdan & Biklen, 1998; Holsti, 1969; Patton, 1990).

Pilot Study Findings and Discussion

Data analysis produced several themes in response to each of the two research questions. Four themes emerged out of research question number one; these themes are listed in Table 1 below.

Table 1

Themes related to the importance of race to the practice of law

Theme 1: The impact of race on sentencing and prosecution decisions

Theme 2: The impact of race on interaction with judges

Theme 3: The connection between race practice locality

Theme 4: The impact of race on jury decisions and jury nullification

Theme No. 1: The impact of race on sentencing and prosecution decisions.

Many of the participating attorneys cited specific examples of cases in which they believed that their race or the race of the defendant whom they represented directly impacted the

judges' sentencing decisions. Participants' comments that support this theme include the following:

- Let's say it's a young Black guy who let's say maybe had some cocaine versus a White guy who's the same age . . . he may add some additional conditions . . . maybe he'll give the other guy more jail or more fine." (Sherry)
- ". . .the county district attorney's office . . . would sometimes work out those cases . . . when several of the perpetrators were young White people." (Robert)
- ". . .the judge in this case . . . significantly decreased the range of sentence that these young White men were facing, he listened to their parents talk . . ." (Robert)
- "I think that race does play a factor with respect to . . . prosecution of persons who are involved in criminal matters." (Ted)
- "I asked for two years, she asked for eight, the judge gave him seven . . . he said that he normally goes mid point between what the two counsels are asking . . . I don't know it could have been race related." (Brenda)
- "But if it was a minority on minority crime, then you would not have the same type of harsh sentence." (Donald)
- "I have seen White defendants get lesser sentences for the same thing than a Black defendant." (Victor)

As the above comments indicate, the participants detailed experiences in which race had impacted sentencing and prosecutorial decisions. The finding that race impacted sentencing and prosecutorial decisions is supported by the United States Justice Department report entitled "And Justice for Some" (2000) in which researchers reported that Black and Hispanic offenders receive harsher treatment than White offenders with similar records. As mentioned previously,

Walker, Spohn, and Delone (2000) have asserted that sentencing decisions throughout the 1990's reflect contextual discrimination. For example, judges in many jurisdictions impose harsher sentences on racial minorities who murder or rape Whites, and impose more lenient sentences on racial minorities who victimize members of their own racial or ethnic group. Additionally, several studies have concluded that prosecutors' charging decisions are affected by race. An analysis of the decision to reject or dismiss charges against felony defendants in Los Angeles County, for example, revealed a pattern of discrimination in favor of female defendants and against Black and Hispanic defendants (Cassia, Spohn, Gruhl, and Welch, 1987).

Theme No. 2: The impact of race on interaction with judges

A number of the interview participants cited examples in which their interaction with the judiciary was negatively impacted as a result of their race. Participants' comments that support this theme include the following:

- “I did have an experience once in Jonesboro where a magistrate court judge asked “Who Are You?” . . . he said he didn't know that they were an equal opportunity employer and that before I fixed my mouth to say anything, I had to listen to him, which I did.” (Larry)
- “He [the judge] asked me a question. I was in the midst of answering, he cut me off, asked my another question, I was in the midst of answering that one, he cut me off . . . he [the judge] called me “Miss Brenda” . . . the other guy, he had been calling him counselor all day or calling him by his last name.” (Brenda)
- “I had this experience me and another older White female lawyer. We traveled the circuit and we were in Waycross and we're both lawyers and everything like that. The judge thought I was her secretary.” (Sherry)

- “I . . . had a case once in front of a Black female judge . . . opposing counsel, a White guy, did not want to afford her the respect. He would not stand up and make objections . . . he jiggled change in his pocket and keys . . .” (Larry)

Many of the participants discussed incidents in which race had impacted their interaction with the judiciary. Such incidents involved judicial disrespect on the part of the judge as well as counsel (where the judge was a different race). It was the perception of the participants that these negative experiences were driven by race.

Theme No. 3: The Connection between Race and Practice Locality

Many of the interview participants commented on the different racial climates in the state judicial circuits in Georgia. They noted that many of the counties in South Georgia were so notorious that they try to avoid court appearances in those counties. Participants’ comments that support this theme include the following:

- “I think it probably depends upon where you practice. I primarily practice in metropolitan Atlanta I have never felt that at least . . . that if a decision was made contrary to me it was because of my race.” (Larry)
- “Certain areas of the country and certain locations where you might be required to go that you didn’t feel comfortable because you were not only a minority . . . you were the sole . . . minority in certain communities.” (Donald)
- “There was another county that . . . was rural . . . that made national news about racial profiling . . .” (Robert)
- “Atlanta is a Black city, so as far as experiencing the whole racial thing here, you know I work for a Black man. Most of the defendants you’re going to see are Black . . .” (Sherry)

- “. . . There are some counties . . . South Georgia . . . below Macon, I will not go. If I know a lawyer down there, I just refer it.” (Victor)

As is indicated by the above comments, the participants noted the difference in practicing in Atlanta, a large metropolitan area encompassing a significant proportion of Georgia’s total population, as opposed to surrounding rural counties or especially South Georgia. These participants noted that because Atlanta was a predominantly Black city, race was less important in their practice; they explained that a significant proportion of the judiciary, DA’s and prosecutors were people of color; thus, race was less of an issue. The participants seemed to assert that urban areas were racially diverse, thereby, making blatant racism much less tolerable and acceptable. Not surprisingly, this theme of diversity also surfaced when the participants addressed research question number two.

Theme No. 4: The Impact of Race on Jury Decisions and Jury Nullification

A number of the interview participants noted that race often impacted jury decisions. These participants specifically addressed the issue of jury nullification and said that they had direct experiences with cases in which the jury indicated to them following the verdict that they had made their decisions at the trial onset and were keenly aware of the racial dynamics in the particular cases. Participants’ comments that support this theme include the following:

- “I’ve had one mistrial as a result of jury nullification . . .the majority of the jurors felt that these African American jurors were predisposed to not convict.” (Robert)
- “. . . it also brings about jury nullification . . . you get an all Black jury . . . a White judge, a White court reporter, White baliff, all White police officers testifying, and you’ve got a White DA and here you got this Black defendant . . and everything become suspicious with Black jurors . . .” (Victor)

Robert noted that in one case the jurors told him following the trial that the two Black jurors on the jury were predisposed not to convict the Black defendant in the case (see above comment); the result was a mistrial. Jury nullification, which has its roots in English common law, occurs when a juror believes that the evidence presented at trial establishes the defendant's guilt, but nonetheless votes to acquit (Walker, Spohn, and Delone, 2000). Many Blacks see jury nullification as an opportunity to correct some of the past injustices of the criminal justice system. Paul Butler, a Black Professor of Law at George Washington University Law School, has argued for jury nullification that is racially-based. He has urged Black jurors to refuse to convict Black defendants accused of nonviolent crimes, regardless of the strength of the evidence mounted against them. According to Professor Butler, "It is the moral responsibility of Black jurors to emancipate some guilty Black outlaws." (Spohn and Spears, 1996, p. 675).

There were three themes which emerged out of research question number two. These themes are listed in table 2 below.

Table 2

Themes related to the role of the and CLE

Theme 1: The need for mandated racial awareness in continuing legal education

Theme 2: The need to increase the participation of Blacks in the profession

Theme 3: The need to increase interaction among all bar members with disenfranchised Populations

Theme No. 1: The need for mandated racial awareness in continuing legal education

Most of the participants expressed support for mandated continuing legal education in which race in the legal profession was specifically addressed and discussed in an open and honest forum. Participants' comments that support this theme are listed below:

- “I would love to sit down and have a real conversation about race . . . it may raise eyebrows, tensions, heart beats, get people mad, but if White folk think we don’t understand where they’re coming from well Dam it! Open up and tell me . . . I think courses are fine. . .” (Brenda)
- “. . . Maybe this is something that we have to make mandatory . . . maybe not every year, maybe every other year.” (Ted)
- “I think it should be mandated! Maybe, maybe like 3 hours or something small.” (Larry)
- “I think that the bar should take on some responsibility of addressing it [race] . . . I think it [CLE offerings] could be successful . . .” (Donald)
- “I think that the state bar would be remiss in not finding a way to honor the importance of encouraging . . . a more diverse perspective . . . by providing . . . courses . . . that deal with how . . . race.” (Robert)
- “If it’s mandatory, I think it would be successful . . .” (Sherry)
- “I agree. I would agree. I, I would agree [with mandated race based CLE].” (Victor)

The participants noted that mandated continuing legal education could be a useful tool in fighting racism in the legal system and within the profession of law. Several noted that this was the least that the bar should do. The potential of raising awareness within the profession, made this an attractive starting point. The legal profession has embraced mandatory continuing professional education as a tool to encourage its members to maintain currency and technical expertise. The extension of this practice to racial awareness would not require sweeping changes. Studies conducted on physicians (Colliver and Osborne, 1985; Stross and Harlan,

1978), health professionals (Hermosa, 1986), and certified public accountants (American Institute of Certified Public Accountants, 1985) indicate that mandatory continuing professional education is an effective tool to force “laggards” to learn. Houle (1980) defined “laggards” as professionals who learn only what they must in order to stay in practice.

Theme No. 2: The need to increase the participation of Blacks in the profession

Several of the participants discussed the need to increase the degree of diversity within the profession. They noted that diversity was needed within the ranks of the judiciary and the prosecution. It was generally agreed that increased diversity serves to diminish the presence of racism and result in overall fairer court decisions. Participants’ comments that support this theme are listed below:

- “I think that . . . I was often requested not only because of my legal skills and backgrounds, but also because there was a need for diversity . . .” (Ted)
- “Race . . . played a factor in many of the instances related to [my] career development . . . there were no Black attorneys who represented management in labor relations and employment law when I first started practicing.” (Donald)
- “. . . As an African American prosecutor, I had an additional sensitivity . . . I do think that it speaks to the need of having more African American discretion on the prosecutorial end of the judicial system.” (Robert)
- “I think the state bar should address it in terms of addressing the law and what are the law schools doing . . . to make the legal community diverse, because that’s where it starts.” (Victor)

Robert indicated that he saw a real need for more prosecutors and judges of color. He contended that judges and prosecutors are human beings and as such they relate to those who

look like themselves; they cannot empathize with someone who comes from a background which is anathema to them. Victor thought that the diversity issue should be addressed starting in law school. It was his opinion that the law schools in Georgia were not admitting and graduating enough candidates of color.

Theme No. 3: The need to increase interaction among all bar members with disenfranchised populations

Several of the participants noted that all members of the profession should have to work with clients from all backgrounds and races in order to appreciate the full impact of race on the practice of law. To this end, it was recommended that the bar adopt a mandatory pro bono rule. Participants' comments that support this theme are listed below:

- “You know how CLE works. You know if it’s an eight hour day they’re gone by noon. You couple that with some pro bono and that would be a good start I think.” (Brenda)
- “And I’m finding that a lot of these Black men actually want their kids. Not just to pay support – they want to raise their children. But the system’s perception of them is that they are all dead beat dads.” (Victor)

The participants thought that mandatory pro bono should be coupled with mandatory continuing legal education in response to the race issue in the practice of law. The participants believed that by forcing attorneys to work with racial minorities and other disenfranchised groups, the pervasiveness of the race issue in the practice of law would be exposed while simultaneously creating professional experiences which allow attorneys to relate to clients across racial and socio-economic divides.

APPENDIX B
CONSENT FORM

CONSENT FORM

I, _____, agree to take part in a study entitled *Attorney support for the Inclusion of Race Related Topics in Continuing Legal Education* which is being conducted by Lorenzo Bowman, Esq., Department of Adult Education, The University of Georgia, (770) 808-5955, under the direction of Dr. Thomas Valentine, Department of Adult Education, The University of Georgia, (706) 542-4017. I do not have to participate in this study if I do not want to; I understand that I can stop my participation at any time for any reason without any penalty or negative consequences. I understand that I can ask to have information related to me returned to me, removed from the research records, or destroyed.

The reason for the study is to assess the need to include race related topics in the Continuing Legal Education requirements for members of the Bar in the state of Georgia.

I will not benefit directly from this research. However, my participation in this research may reveal a need that must be addressed in continuing legal education requirements if the goal of State Bar of having the best trained lawyers possible is to be met.

If I volunteer to take part in this study, I will be asked to do the following things. I will take part in one interview that will last from 45 minutes to 1 hour in duration. The interview will be tape recorded. During the interview, I will be asked to address the importance of race to my practice of law in the state of Georgia through a series of questions.

No discomforts or stresses are expected. No risks are expected. I understand that if I am uncomfortable in discussing race at any time during the interview process, I can withdraw my participation without consequences.

The data from this study will be confidential and my identity will not be publicized to any third party unless otherwise required by law. The tapes as well as any identifying information will be destroyed on April 30, 2004. The data from this study may appear in a published study, but the name of the company with which I am affiliated and my personal identity will not be disclosed; pseudonyms will be used in referring to all participants.

The researcher will answer any further questions about the research, now or during the course of the project, and can be reached at 770-808-5955.

My signature below indicates that the researcher has answered all of my questions to my satisfaction and that I consent to volunteer for this study. I have been given a copy of this form.

Signature of Researcher/Date
E-Mail: lorenzobowman@aol.com
Phone: 770-808-5955

Signature of Participant/Date

Additional questions or problems regarding your rights as a research participant should be addressed to Chris A Joseph, Ph.D., Human Subjects Office, University of Georgia, 606A Boyd Graduate Studies Research Center, Athens, Georgia 30602-7411; Telephone (706) 542-3199; E-Mail Address: IRB@uga.edu.

APPENDIX C
INTERVIEW SCRIPT

Interview Script

Interviewer: Hello _____, I am Lorenzo Bowman, a Ph.D. candidate at the University of Georgia. I am also a member of the State Bar of Georgia. (White interviewer will instead indicate that they are assisting in dissertation research at the University of Georgia).

Interviewer: This research is concerned with the impact of race on the profession of law and the efficacy of continuing legal education in addressing race.

Interviewer: Your participation is strictly voluntary. Your participation will be treated with strict confidentiality. Your identity will not be revealed. Pseudonyms will be used in referring to participants in the dissertation and any subsequent publication. Should you become uncomfortable at any point during this interview, you may terminate it without any repercussion. Please read over the consent form (interviewer will now distribute the form to the interviewee) and let me know if you have questions about anything contained in it.

Interviewer: After reading the consent form, do you consent to participation and to the taping of this interview. If so, please read and sign the consent form (given to participant at this time).

Interviewee: Yes. (If no, then “Thanks” will be extended to the interviewee and the telephone conversation will be terminated).

*****Recorder is now turned on*****

Interviewer: What is your primary area of practice expertise?

Interviewer: How long have you been in practice?

Interviewer: How has race impacted you in your law practice? Can you cite a specific incident?

Interviewer: Do you think that race is significant to the practice of law? If so, in what way(s)?

Interviewer: How do you view the reaction of the profession to the significance of race in the practice? Overall, how would you rate the response of the profession?

Interviewer: Assess the effectiveness of continuing legal education in addressing the issue of race and its significance in the profession?

Interviewer: What are the possible roles of continuing legal education in addressing race in the legal profession?

Interviewer: Thank you for your participation in this study. Should you wish to withdraw your participation at any time, please give me a call at 770.808.5955.