

THE CONSTRUCTED IDENTITIES OF ASIAN AND AFRICAN AMERICANS: A STORY OF TWO RACES AND THE CRIMINAL JUSTICE SYSTEM

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I. INTRODUCTION

The United States' criminal justice system is a modern form of tribal warfare. However, battles have been raging against racial minorities in the U.S. long before the war on drugs was officially declared. The racism embedded in the criminal justice system is born of the same hatred and fear that spawned slavery, Jim Crow, and exclusionary immigration policy. As law is the weapon of choice in these battles, codified hatred has shaped U.S. history. In their seminal work on the development of racial categories, Michael Omi and Howard Winant refer to slavery, segregation and exclusionary immigration policy as "racial projects."¹ Specifically, Omi and Winant state that "a racial project is simultaneously an interpretation, representation or explanation of racial dynamics and an effort to reorganize and redistribute resources along particular racial lines."²

According to Omi and Winant, racial projects are considered racist when they "create or reproduc[e] structures of domination based on essentialist categories of race."³ An essentialist approach to race is one based on stereotypes and generalizations. For example, slavery was justified by assertions that Africans were an inferior race.⁴ Asians were restricted from immigrating to the United States because it was Congress's and the Su-

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1. MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960s TO THE 1990s (1994).

2. *Id.* at 56.

3. *Id.* at 71.

4. *See Id.* ("[T]he introduction of slavery . . . presupposed a worldview which distinguished Europeans, as children of God, full fledged human beings from 'Others.'").

preme Court's view that Asians could not assimilate.⁵ Modern essentialist approaches to race are found in the stereotype of a violent, young African American male and the perception that Asian Americans will always be foreigners.

This country's most invidious racist racial projects were impossible to implement without first defining and separating the races. Slavery, Jim Crow, anti-miscegenation laws, and exclusionary immigration policies all hinged on racial classifications.⁶ The United States Supreme Court declared unconstitutional the majority of the racist racial projects implemented by the U.S. government.⁷ However, the criminal justice system has replaced slavery, Jim Crow and exclusionary immigration policy as the racist racial project that shapes race in America. The criminal justice system is inherently racialized because people of color and new immigrants are disproportionately represented as both victims and perpetrators of crime.⁸ According to Paula Johnson, "not only is race used to identify criminals, it is embedded in the very foundation of our criminal law. Race helps determine who the criminals are, what conduct constitutes a crime, and what crimes society treats most seriously."⁹ This Article explores how an essentialist approach to race is evident in today's criminal justice system. It argues that people of color are similarly situated both inside and outside the racist racial project we call the justice system, and therefore advocates

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5. In a landmark decision, the Supreme Court refused to grant citizenship to an immigrant from India. ("It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white . . . [I]t cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation. *United States v. Thind*, 261 U.S. 204, 215 (1923).
 6. See F. JAMES DAVIS, *WHO IS BLACK? ONE NATION'S DEFINITION*, 113–17 (University Park Press 1997) (discussing the socio-historical factors that shaped early racial classification in the United States).
 7. See, e.g., *Plessy v. Ferguson*, 163 U.S. 537, 552 (1868). *Plessy* established the separate but equal doctrine as constitutionally sound and gave judicial validation to the notion that African Americans were inferior and unfit to associate with whites. Cf. *Gong Lum v. Rice*, 275 U.S. 78, 84 (1927) (holding that a Chinese citizen of the United States was not denied equal protection of the laws when he was taught with African American students and furnished an education alongside them). The Court relied on *Plessy* and stated that "the question nor its outcome is any different, when between white students and black students or white students and yellow students." For the purposes of separate but equal, this case categorizes Asians Americans with African Americans. Both *Plessy* and *Gong Lum* were overruled by *Brown v. Board of Educ.*, 347 U.S. 483, 495. (1954), where the Court held that the separate but equal doctrine violated the Fourteenth Amendment.
 8. See Ronald Weich and Carlos Angulo, *Justice on Trial: Racial Disparities in the American Criminal Justice System*, at (last visited Mar. 16, 2003) <http://www.civilrights.org/issues/cj/details.cfm?id=61>.
 9. Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347, 348 (1996) (exploring the construction of race and its influence on the events surrounding the murder of Vincent Chin, a Detroit auto worker).

for coalition building between minority groups as a method of combating the “white supremacy” inherent in the criminal justice system.¹⁰

In Part II of this Article, I discuss the criminal justice system’s general contributions to racial formation in the modern United States, and specifically discuss how criminal law enforcement and adjudication shapes what it means to be African and Asian American in this country.¹¹ Part III explores the factual circumstances surrounding the deaths of Malice Green, an African American man who was beaten to death by two white Detroit police officers, and Vincent Chin, an Asian American, also beaten to death by two white Detroit autoworkers. Arguably, both men were killed because their killers took an essentialist view of their victims’ racial identities. To his murderers, Malice Green ceased to be an unarmed man and was perceived as some sort of violent super predator. Similarly, Vincent Chin, born and raised in the Midwest, was to his murderers a foreign interloper stealing jobs from red-blooded Americans. In Part III, I examine the portrayals of these men, and the commonalties surrounding the adjudication of their accused. In conclusion, I draw on the lessons learned from the deaths of Malice and Vincent to argue for coalition building

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10. See *id.* at 397. The term “white supremacy,” as Johnson uses it, does not refer solely to hate groups. She sees white supremacy as evident in intra-ethnic conflict. For example: “When a Vietnamese family is driven out of its home in a project by African American youth, that is white supremacy. When a Korean storeowner shoots an African American teenager in the back of the head, that is white supremacy. When 33 percent of Latinos agreed with the statement, ‘Even if given the chance, African Americans aren’t capable of getting ahead,’ that too is white supremacy.”
11. See Reginald Leamon Robinson, “*The Other Against Itself*”: *Deconstructing the Violent Discourse between Korean and African Americans*, 67 S. CAL. L. REV. 15, 25 (1993). Robinson explores the sources of conflicts between Asian and African Americans:

Violent discourse directed at Korean merchants makes its ultimate point: Anger, as a symbol, and as an act, is an authentic voice and a vehicle for rooting out racism, racial injustice, and economic inequality. Given the relative invisibility of monopoly capitalism, Korean merchants might personify for African Americans a present-day form of the structural inequality against which they struggle. As such, Korean merchants, as a class, perhaps symbolize the dominant view that black poverty is a victimless crime for which African Americans must take complete responsibility. As a consequence, African Americans may react against this perceived personification by first pinpointing an then engaging [Korean] merchants in violent discourse.

This Article examines the placement of African and Asian Americans in the criminal justice system to the exclusion of Latino/as because of the historically tense relations between African and Asian Americans. African American and Latino/a Civil Rights Organizations have participated, if somewhat limitedly in the coalition building this paper advocates. However, it is important to acknowledge my thesis would probably be enriched and supported with a discussion of the Latino experience, as the construction of Latino/a ethnicity has undoubtedly been shaped by interactions with the justice system. See also Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How we Constructed “Los Angeles,”* 66 S. CAL. L. REV. 1581, 1585 (1993) for an explanation of why African American identity is often located in opposition to Asian American identity. “Both [Asian Americans] and African Americans are outgroups dependent on the will and leftovers of a dominant group. [A hierarchical image of minorities presupposes] deprivation by social and political forces beyond our control. And it assumes that the competition must occur among those forced to stand in line, not between those making the handouts and those subject to the handouts.”

between Asian and African American civil rights organizations, particularly on criminal justice issues.

II. THE IMPORTANCE OF EXAMINING RACIAL FORMATION IN THE CONTEXT OF CRIMINAL LAW

"The determination of racial categories is no easy task. For centuries this question has precipitated intense debate and conflict and disputes over natural and legal rights, over distribution of resources, and indeed over who shall live and who shall die."¹²

This statement of the far-reaching ramifications of racial classification may seem dramatic. However, "African Americans are eleven times more likely to be shot dead and nine times more likely to be murdered than their white counterparts," and African Americans have the highest violent crime victimization rates of any racial group.¹³ Thirty-five percent of those who have been executed since 1976 were African American, while African Americans make up only twelve percent of the United States' populations. Eighty-two percent of the people currently on death row were convicted of killing white victims, even though nationally only fifty percent of murder victims are white.¹⁴ Further, hate crimes committed against Asian Americans have doubled over the last twelve years, and incarceration rates for Asian Americans have quadrupled in the past ten years.¹⁵

12. OMI & WINANT, *supra* note 1, at 54.

13. See The Department of Justice Bureau of Justice Statistics, available at <http://www.ojp.usdoj.gov/bjs> (last visited Dec. 5, 2000); see also Douglas S. Massey, *Getting Away with Murder: Segregation and Violent Crime in Urban America*, 143 U. PA. L. REV. 1203, 1231 (1995). Massey explores the correlation between violent crime and urban segregation of African Americans and concludes that "unless forceful action is undertaken soon to desegregate urban America, the cycle of black, urban violence can be expected to continue. As the cycle of violence continues, political support for a policy of desegregation will wither and become even more remote, leading to the perpetuation of the multiple problems created by the coincidence of segregation and black poverty."

14. See Death Penalty Information Center Statistics, <http://www.deathpenaltyinfo.org> (last visited Mar. 16, 2003) for statistics about the patterns of racial discrimination in capital sentencing. See also Dorothy E. Roberts, *Crime, Race and Reproduction*, 67 TUL. L. REV. 1945, 1958 (1993) (noting that "black violence against white victims is deemed the most serious offense committed in our society. This judgment is evidenced by the striking racial disparity in the imposition of the death penalty.").

15. See <http://napalc.org/news/index.html> (last visited Mar. 16, 2003). The National Asian Pacific American Legal Consortium (NAPALC) has reported an increase in hate crimes against Asian Americans each year since 1999. The NAPALC Executive Director reports that the increase in anti-Asian violence is especially troubling given the decline in other serious crimes for seven consecutive years. See also WEICH & ANGULO, *supra* note 8, for a report published by the Leadership Conference for Civil Rights finding that "the color of a person's skin is a better indicator of how long a person's sentence will be, whether or not a person will be pulled over by police, whether or not a person is given the death penalty, what kind of plea bargain a person is offered, or whether or not a juvenile is tried as an adult than any other indicator." See also Johnson, *supra* note 9, at 399. Johnson refers to a 1992 Report of the US Commission on Civil Rights which found that since 1980 the rate of hate crimes committed against Asian Americans had doubled.

The disparities in the application of the death penalty, the astronomical rates of African American victimization, the rising rates of anti-Asian violence and incarceration strongly suggest that in the United States, race is not simply a classificatory system based on phenotypic differences. Race, and its legal construction define social and political relationships and positions in society.¹⁶ “Law is implicated in the construction of the contingent social systems of meaning that attach in our society to morphology and ancestry, the meaning systems we commonly refer to as race. Law constructs race.”¹⁷

A. *The Criminal Justice System and the Construction of Blackness in America*

Law constructs race, and race shapes the criminal justice system. “Society views race as an important, if not determinative, factor in identifying criminals. This viewpoint is part of a belief system deeply embedded in American culture that is premised on the superiority of whites and the inferiority of [non-whites] . . . popular images of black criminality are perpetuated by the media and reinforced by the relatively large numbers of blacks seized up in the criminal process.”¹⁸ Where the majority of people involved with the criminal justice system are non-white, the law begins to do more than define race; it acts as a powerful force of domination and suppression, and defines race relations.

The courts have legitimated the common perception of blacks as criminals. Police may use race as a factor when developing probable cause.¹⁹ Additionally, police and immigration officials often target individuals of a specific race with policies such as street sweeps, gang profiles and border stops.²⁰ Such practices “erase the identities of . . . people as individual human beings and instead defines them, on the basis of their race, as potential criminals.”²¹ Such policies are at their core essentialist because they are impossible to implement without relying on prevalent stereotypes. Without the image of the African American drug dealer, the Latino gang member, and the Middle Eastern terrorist, such race-based law enforce-

16. OMI & WINANT, *supra* note 2, at 55.

17. Ian F. Haney Lopez, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 19 (1996) for a discussion on the far-reaching effects of the law on racial formation. For instance, miscegenation laws affected the physical characteristics of a population. Jim Crow affected access to economic resources and social capital.

18. See Roberts, *supra* note 14, at 1947. Roberts refers to an incident in Oneonta, New York to illustrate the realities of the construction of race and crime in the United States. In 1992, a seventy-seven-year-old white woman was attacked, and she informed police that she believed her attacker was a black man. The police proceeded to create a “black list” of all the black and Hispanic men in attendance at the nearby college. The police tracked these men down in their dorms, at their jobs, and in the street. In the words of one suspect “the only probable cause they had was ‘You’re black, you’re a suspect.’”

19. See Roberts, *supra* note 14, at 1946, citing *U.S. v. Collins*, 532 F.2d 79 (8th Cir. 1976) (upholding the detention of a black man in a white car when the suspect report identified three black men in a brown car).

20. See Roberts, *supra* note 14, at 1949–50, citing Sheri Lynn Johnson, *Race and the Decision to Detain a Suspect*, 93 *YALE L.J.* 214, 215 (1983) (referring to the practice of police entering a neighborhood and detaining many people without probable cause, and the use of formalized criminal profiles that may contain references to race).

21. *Id.*

ment procedures could not exist. Therefore, the social construction of race lies at the core of street sweeps, border stops and gang profiles.

Just as race is a social construct, so is crime. Historically, decisions as to what behaviors to criminalize were made with the same racial bias that shaped racial formation itself. "The idea that color itself can create or denote criminal behavior is deeply rooted in our history."²² The Negro, Black, or African American classification was originally imposed upon a class of people for the economic benefit of the landed gentry.²³ In fact, racial oppression was achieved through definitions of criminal activity. The racial construction of crime is not new. "During the slavery era, the racial construction of crime was formally written into law. Slave codes created a separate set of crimes for slaves that were sanctioned by public punishments, not applicable to whites and that included behavior that was legal for whites."²⁴

Currently the war on drugs is eerily reminiscent of the slave codes. African Americans are incarcerated at six times the rate of their white counterparts.²⁵ "The United States has achieved the highest incarceration rate in the world by imprisoning black men."²⁶ The United States spends literally billions of dollars adjudicating and incarcerating African Americans, and "many are being unlawfully arrested daily because they are perceived as a threat to some police officer who prejudged them on the color

22. Paul Finkelman, *The Color of Crime*, 67 TUL. L. REV. 2063, 2064 (1993).

23. See Davis, *supra* note 6, at 113–17 for a discussion of the economic motivations of the assertion that anyone with "one drop" of black blood would be considered black.

The hypo-descent or "one-drop," rule determined that anyone who had any traceable African ancestry would be classified as Black. Such a classification was developed for purely economic rationales. It was to the benefit of slave owners to assign as many individuals as possible to subordinate status. Whites benefited greatly from the one-drop rule, as it increased the number of enslaved and kept racially mixed children under their control.

24. Roberts, *supra* note 14, at 1953. Roberts discusses economic forces shaping the definition of crime by referring to early English laws as they applied to feudal landlords:

The law of theft arose to protect the interest and property of the mercantilists against the interests of and the property of workers; vagrancy laws reflect the tensions in pre-capitalist England among feudal landlords, peasants and the emergent capitalist class in the cities; the rights of rural village dwellers to hunt, fish, and gather wood were retracted and such activities became acts of criminality punishable by death as a result of the state's intervention on the side of the landed gentry in opposition to the customs, values and interests of the majority of the rural population.

Id. at 1954–55 n.40.

25. Department of Justice Bureau of Justice Statistics, *supra* note 13.

26. Roberts, *supra* note 14, at 1957. See also Massey *supra* note 13, at 1207–10. "High rates of crime [victimization] are structurally built into the experience of urban blacks by virtue of their residential segregation because, during periods of economic dislocation, segregation concentrates poverty and anything associated with it. Because crime and violence are strongly correlated with income deprivation, any social process that concentrates poverty also concentrates crime and violence." African Americans are victims of crime as often as they are perpetrators, a fact commonly glossed over by law enforcement officials and the media.

of their skin as opposed to the content of their character."²⁷ The fallout from incidents like the 1992 civil unrest in Los Angeles where "shoplifter, looter and gang member images [were] reinforced as the operative aspects of African American identity," allow local governments to justify such expenditures.²⁸ Such myths, including perceptions of African Americans as super predators, determine the ideology of crime in America.²⁹ "[African Americans] are defined as criminals and crime is defined as what [African American] people do."³⁰

The criminal justice system shapes what it means to be black in America by reflecting and perpetuating racism,

While most white men are developing skills, raising families and starting careers, a significant number of black men are developing criminal records, raising bail, and starting prison sentences . . . [The] life prospects of these [men] are seriously diminished and their possibilities of gainful employment are reduced, thereby making them less attractive as potential husbands and incapable of supporting the children fathered by them. It is important that an appreciation for all races and ethnic groups be encouraged and required by our police departments and law enforcement agencies so that these institutions will stop wreaking havoc on the lives of African Americans.³¹

B. Asian Americans and the Criminal Justice System: Devalued Difference

An examination of racialized criminal law enforcement illustrates the power the criminal justice system has in defining what it means to be black in the United States. However, the manner in which crimes committed against and by Asians are prosecuted reinforces stereotypes of Asians as "the other"—that is perpetually foreign, unfair economic competitors, and subordinate to whites.

Criminal law enforcement tends to construct Asians Americans as alien sub-species. The experience of one Korean American elderly man illus-

27. Mary Maxwell Thomas, *The African American Male: Communication Gap Converts Justice into "Just Us" System*, 13 HARV. BLACKLETTER L.J. 1, 2 (1997) (citing Marc Mauer & Tracy Huling, *Young Black Americans and the Criminal Justice System: Five Years Later* (1995), a study that found an estimated \$6 billion a year was spent on young African American males in the criminal justice system).

28. Ikemoto, *supra* note 11, at 1590–91.

29. See *People v. Goetz*, 497 N.E.2d 41 (N.Y. 1986) where a jury found a white man not guilty of attempted murder for shooting numerous times at four black youths who asked him for five dollars. Goetz asserted self-defense. Cf. Cynthia Kwei Yung Lee, *Race and Self Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367, 417–18 (1996). "Complete strangers called Goetz a subway hero, an average man-on-the-street citizen who had courageously stood up to the bad guys. Goetz was reconstructed as the true victim while the four Black youths were constructed as menacing criminals who had threatened Goetz."

30. Roberts, *supra* note 15, at 1960.

31. Thomas, *supra* note 27, at 28–29 (quoting RANDOLPH N. STONE, *THE CRIMINAL JUSTICE SYSTEM: UNFAIR AND INEFFECTIVE* 19–20 (1992) and citing MARC MAUER & TRACY HULING, *YOUNG BLACK AMERICANS AND THE CRIMINAL JUSTICE SYSTEM: FIVE YEARS LATER* 17 (1995)).

trates this point. While out for a walk, Tong-Sik Chong became disoriented and tried to enter the wrong home, requesting permission to enter in his native language, Korean. The owners of the house became frightened and called the police. Upon their arrival, the police handcuffed and arrested the eighty-three-year-old grandfather. His family was frantic with worry. At 3 A.M. the next morning, after declining to press any charges, the police released Mr. Chong. Upon his release from the police station, Chong was mugged and maliciously beaten. He was then found and rushed to an emergency room. A nurse there heard his family request help in finding their missing grandfather on Korean radio, and the family was reunited. However, as a result of this incident, Chong was terrified to leave the house. He died shortly thereafter, "never having recovered his prior vigor and enjoyment of life."³² Chong suffered this treatment at the hands of officers of the criminal justice system because

[N]o one there [saw] Chong as a human being. No one there thought: "this could be my grandfather," no one has any life experience that made them react to [Chong] as an elderly man in need rather than a worthless criminal or vagrant. There was no one in leadership who thought to establish protocols requiring translators when a non-English speaking person is arrested, who thought in advance about the consequences of the horrible misunderstandings likely to result when no one at the police station knows how to speak Korean and there is no procedure for this translation This has nothing to do with lack of qualifications, . . . and everything to do with racism. When decision-makers think "good cop," they do not picture [an Asian.] When people think of "chief of police" or "police commissioner," they do not picture an [Asian.] In part, this is because the people who are in the business of constructing images in this country . . . are virtually all white . . . [All this makes it impossible to] counter stereotypes that make "Asian" and "human" two separate sets in the minds of many Americans.³³

The United States conceptualizes Asian Americans as perpetually foreign, as "interlopers" in the United States. "[W]ithin the United States, if a person is racially identified as African American or white, that person is presumed to be legally a US citizen and socially an American. These presumptions are not present for [Asian Americans]"³⁴

Advocates may inadvertently reinforce Asian American's foreignness and alien status when representing Asian Americans in criminal proceedings. For example, Asian American defendants have the option of relying on a "cultural defense." When a defendant asserts a cultural de-

32. Mari Matsuda, *Crime and Affirmative Action*, 1 J. GENDER, RACE & JUST., 309, 309 (1998). Matsuda documents this incident in this piece where she uses the disparities in the criminal justice system as support for continuation of affirmative action programs.

33. *Id.* at 312-13.

34. Johnson, *supra* note 9, at 386 (citing NEIL GOTANDA, ASIAN AMERICAN RIGHTS AND THE "MISS SAIGON SYNDROME," IN ASIAN AMERICANS AND THE SUPREME COURT 1095-96 and n.30 (citing T. Alexander Aleinikoff, *Citizens, Aliens, Membership, and the Constitution*, 7 Const. Commentary 9 (1990))).

fense, he or she asks the prosecutor, judge or jury to consider how his or foreign culture and/or socialization influenced the criminal act.³⁵ A formalized approach to the cultural defense is problematic as “ [it] leads to dehumanizing descriptions of Asians . . . [and] it will force defendant’s actions to be defined through a group based identity and cultural stereotypes”³⁶

Asian Americans are often devalued as compared to their white counterparts, both when they are victims and perpetrators of crime. For instance, there has been a sharp upswing in racially motivated crime against Asian Americans in the past five years. “Hate incidents reported at an Asian Americans business or place of employment increased 117%.” Incidents of racially motivated crimes reported on college campuses have increased 100%.³⁷ “The consistent message of violence directed against Asian Pacific Americans is that you are the foreigner, you do not belong here, you are not an American.”³⁸

A startling example of Asian American dehumanization occurred in the David McKnight case. McKnight attacked his roommate John Nguyen, a fifty-five-year-old Vietnamese immigrant, with a machete. He “almost sliced [Nguyen] in half,” and Nguyen died as a result of this attack. The prosecutor assigned to this case suggested to McKnight’s public defender that he may have a good claim of self-defense, and additionally asked if there were any witnesses who would testify to McKnight’s “peaceful reputation.” The public defender was shocked that the prosecutor would offer to assist a defendant accused of murder.³⁹ “It seem[ed] obvious that the fact that McKnight was white and his victim was a Vietnamese immigrant had everything to do with the prosecutor’s unusual attitude about prosecuting this case.”⁴⁰ The prosecutor’s actions here illustrate the idea that “physical violence is easier to perform on dehumanized victims [such as

35. Ahn T. Tam, *Culture as a Defense: Preventing Judicial Bias Against Asians and Pacific Islanders*, 1 *ASIAN AM PAC. IS. L.J.* 49, 49 (1993).

36. Leti Volpp, *(Mis) Identifying Culture: Asian Women and the “Cultural Defense”* 17 *HARV. WOMEN’S L.J.* 57, 94–95 (1994). Professor Volpp presents the complexities of the cultural defense theory, critiquing its role in essentializing race, while stating that in some circumstances the cultural defense is appropriate.

In formulating a legal recourse to the predicaments of a particular individual whose behavior was influenced by forces such as racism, sexism, and subordination in the form of violence, admission of cultural factors should not function as a reductive explanation of that individual’s actions fitting into group behavior or culture. Rather the choice to provide an individual defendant with cultural information should be made for the purpose of explaining that individual’s state of mind.

37. National Asian Pacific American Legal Consortium, *Executive Summary of 1996 Audit*, 5 *ASIAN PAC. AM. L.J.* 99, 99(1998); National Asian Pacific American Legal Consortium *Executive Summary of 2001 Audit of Violence Against Asian Pacific Americans*, available at http://www.napalc.org/literature/annual_report/2001.htm (reporting a 23% increase in hate crimes against Asian Americans since 2000).

38. Victor M. Hwang, *The Interrelationship Between Anti-Asian Violence and Asian America*, 21 *CHICANO-LATINO L. REV.* 17, 23 (2000).

39. Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 *FORDHAM L. REV.* 13, 13 (1998). Professor Davis recites this event to illustrate the discriminatory exercise of prosecutorial discretion.

40. *Id.* at 14.

Asian Americans] because the social and psychological inhibitions on committing violence on a fellow human being become disengaged.⁴¹

III. THERE ARE PEOPLE BEHIND THESE CONSTRUCTIONS: THE STORIES OF MALICE GREEN AND VINCENT CHIN

Constructions of race based on stereotypes and institutional racism do not just impact the identity of racial or ethnic minorities. Sometimes such racism can cost individuals their lives. Certainly this was the case for both Malice Green and Vincent Chin. An African American and an Asian American, both were residents of Detroit, Michigan, and both were murdered because of the hatred and fear their race evoked in their murderers. An examination of their deaths, and the trials of the accused illustrates that "racial power is often most dramatically exercised, and most easily recognized in the enforcement [or lack thereof] of criminal laws."⁴²

A. *Police Brutality: The Death of Malice Green*

Oh my brothers and sisters [the white man] has committed God's greatest crime against your and my kind every day of his life. He ought to get on his knee and say he's committed the crime. But does he do that? No, no, he scorns you. He splits your head with his nightstick, he busts you upside your head with that billy club Four hundred years is long enough. You've been sitting down, laying down, and bowing down for four hundred years. I think it's time to stand up.⁴³

Malice Green was a thirty-five-year-old black man. He was the unemployed father of five children who performed landscaping work for neighbors. He had recently planned a trip to visit his estranged wife in North Carolina. His family remembered him as jovial.⁴⁴ On November 5, 1992, police officers Walter Budzyn and Larry Nevers were patrolling the city of Detroit when they observed Malice Green's red Ford Topaz.⁴⁵ This vehicle

41. JUAN PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR MULTICULTURAL AMERICA* 1022 (West 2000).

42. Randall Kennedy, *The State, Criminal Law and Racial Discrimination: A Comment*, 107 HARV. L. REV. 1255, 1258 (1994) (citing in opposition Gary Peller, *Criminal Law, Race and the Ideology of Bias: Transcending the Critical Tools of the Sixties*, 67 TUL. L. REV. 2231, 2251 (1993)). Kennedy critiques the traditional analysis of racism in the criminal justice system and asserts that the disparate number of incarcerated African Americans results from "a state apparatus responding sensibly to the desires of law abiding people, including the great mass of black communities, for protection against criminals preying on them" rather than institutional racism and white hegemony.

43. *People v. Budzyn*, 566 N.W.2d 229, 237 (Mich. 1997). The Michigan Supreme Court refers to this monologue from the movie *Malcolm X* in its opinion reversing the conviction of one of the police officer accused of murdering Green. This conviction was reversed because *inter alia* the jury was shown this movie during the trial, and the court held that the inflammatory nature of the film constituted an extraneous influence on the jury.

44. L.A. Johnson, *Family Describes Green as a Hardworking Man*, DET. FREE PRESS, Nov. 7, 1992, at 10A.

45. The facts of the Malice Green trial have been condensed from those articulated by the court in *Budzyn*, *supra* note 43 at 232-34.

caught their attention because it resembled a Tempo stolen in the area. The officers observed Green parked in front of a house apparently known for drug activity. The owner of the home, Ralph Fletcher, subsequently admitted that the house was used for illegal drug activity.

The police pulled up behind Green and presumably confirmed his vehicle was not stolen. Simultaneously, the officers observed Robert Knox run in the opposite direction of the squad car. They mistakenly thought Knox had been a passenger of the car, and Budzyn took off in pursuit. Budzyn escorted Knox back to the two vehicles. Upon his arrival, Green and Fletcher, who had been riding in the car, stood beside Green's vehicle, and Nevers stood outside the police car. Upon being asked by the officers for his driver's license, Green reentered the car through the passenger side door and attempted to open the glove compartment.

At this point, Budzyn observed Green drop something that looked like crack and hold onto another object with his right hand. Fearing Green had a knife or razor blade, Budzyn ordered Green to open his hand. Green refused and a struggle ensued. Witnesses claimed Budzyn straddled Green, laid him across the front seat of the car, and swung his flashlight over his head down towards Green at least ten times.

Green's hand remained clenched, so Nevers began hitting Green's hand and knees with his flashlight. Nevers then opened the driver's side door and used "a sweeping golf swing" to strike Green approximately fifteen times. When the medical technicians arrived on the scene, they saw Nevers strike Green once more in the head, chest, and stomach with his flashlight. A third officer who arrived on the scene pulled Green from the vehicle, handcuffed him, and laid him "face down in the street in a pool of his own blood." Green had a seizure as the medical technicians worked to revive him, and he died en route to the hospital. The medical technicians saw that part of Green's scalp had been torn off during the beating.⁴⁶ In his hand, Green held car keys and a piece of white paper.

Prosecutors charged Budzyn and Nevers with second-degree murder. The Detroit Police Department immediately terminated their employment. Budzyn and Nevers were tried together in the summer of 1993, with separate juries.⁴⁷ Both juries were predominately black.⁴⁸

The prosecution presented evidence of the brutality of Green's beating. Prosecutors alleged that the officers inflicted "at least 14 blows to Malice Green's face and head, ripped loose part of his scalp, damaged his brain, and caused his heart and lungs to fail . . ."⁴⁹ The defense rejoiced when they received autopsy results indicating Green had drunk alcohol and used cocaine the day he died. "Cocaine in [Green's] system [mixed with alcohol] clearly casts a new light on his behavior on the night in question."⁵⁰ The defense alleged that the seizure that led to Green's

46. Lisa Holewa, *Trial Ordered for Three Officers; Charges Dropped Against Sergeant*, ASSOC. PRESS, Dec. 23, 1992, available at 1992 WL 5331016.

47. *Id.*

48. Reuters, *Ex-Detroit Cop Might Avoid Prison*, CHI. TRIB., Apr. 18, 1998, at N10.

49. Jim Irwin, *Pathologist says Police Victim was Brutally Beaten*, ASSOC. PRESS, Dec. 14, 1992, available at 1992 WL 5329627.

50. Lisa Holewa, *Detroit Beating Victim had Cocaine, Alcohol in His System, Reports Show*, ASSOC. PRESS, Nov. 18, 1992, available at 1992 WL 5325836.

death resulted not from the defendants repeatedly beating Green over the head with a flashlight, but from the mixture of drugs and alcohol in his system. Additionally, the defense presented evidence of Green's prior criminal convictions, highlighting the fact that Green was convicted of battery in 1990 for pushing two police officers. Green also was convicted of marijuana possession, drunk driving, and driving with a revoked license.⁵¹

The trial lasted seven weeks. On August 23, 1993, both officers were convicted. On October 12, 1993, Nevers received a sentence of twelve to twenty-five years, and Budzyn was sentenced to eight to eighteen years.⁵²

In July 1997, the Supreme Court of Michigan reversed Budzyn's conviction holding that the jury was exposed to extraneous evidence creating the real and substantial possibility of prejudice.⁵³ Specifically, the Budzyn court was convinced that the jury may have been influenced by a court-approved viewing of the movie *Malcolm X* and of media coverage of the trial. Even though the jurors were sequestered during the trial, they were allowed to go home for one night during a break in the proceedings. During this time some members of the jury saw news reports detailing the city's riot preparation, as there was a common fear that if Nevers and Budzyn were acquitted, Detroit would riot as did the city of Los Angeles in the wake of the Rodney King verdict.⁵⁴ Further, towards the end of the proceedings, the trial court provided the jury with movies, while the proceedings were in recess. The jurors watched the movie *Malcolm X*. The Michigan Supreme Court described the movie as follows:

The juries viewed the film with the understanding that it had been provided with three others, as entertainment by the trial court during a period late in trial where there were no trial proceedings. The film begins with the voice of Malcolm X's character giving a provocative speech charging "the white man with being the greatest murderer on earth" while the viewer is being shown footage of Rodney King being beaten by Los Angeles police officers inter-

51. David Goodman, *Man Beaten to Death Had Brushes with the Law, Prosecutor Says*, ASSOC. PRESS, Nov. 11, 1992, available at 1992 WL 5324841. These incidents occurred in Lake County, Illinois, and Nevers and Budzyn had no prior knowledge of Green's record before they encountered him the night he died.

52. Oralandar Brand-Williams, *Ex-Cop is Given 7-15 Years for Beating Death*, DETROIT NEWS, May 17, 2000, at C1.

53. Budzyn, 566 N.W. 2d at 240-43. At the same time, the court heard Nevers's appeal but found that since an eyewitness actually saw him swing at Green's head, the trial errors were harmless beyond a reasonable doubt. *Id.* However, Nevers's conviction was later overturned by a federal district court upon a writ habeas corpus. See *Nevers v. Killinger*, 990 F. Supp. 844 (E.D. Mich. 1997).

54. See *Budzyn*, 566 N.W.2d at 255. See generally Ikemoto, *supra* note 11 for a discussion of the Los Angeles Riots.

The 1992 Los Angeles riots precipitated by the acquittal of four white police officers who had severely beaten Rodney King, have been characterized as the worst urban riots of the century. Over fifty persons died, and over 2400 persons were injured.

Perea, *supra* note 41 (citing Joe R. Feagin & Hernan Vera, *White Racism* 83 (1995)).

spersed with an American flag. The Rodney King videotape is shown in slow motion, in eight segments⁵⁵

In its analysis, the *Budzyn* court painstakingly dissects the movie's message. The court's opinion quotes several long excerpts from the movie. Among the scenes the court found most disturbing were those that dealt explicitly with white-on-black violence.

Brothers and sisters, I am here to tell you that I charge the white man. I charge the white man with being the greatest murderer on earth You can't deny the charges. We're living proof of those charges. You and I are the proof. You are not an American, you are a victim of America You are not an American. You're one of the twenty-two million black people that are victims of America.⁵⁶

The court acknowledged that words such as these did not introduce any extra-judicial evidence about the incident before the jury. However, the court felt that "viewing the film, with its forceful words and images, may have undermined the jury's ability to examine impartially the defendant's credibility The images of police brutality from *Malcolm X* confirmed the people's description of defendant's conduct, thereby lending additional credibility to the people's case."⁵⁷ The court describes the movie as "strikingly inflammatory" and expressed concern about the emotional response the movie may have elicited from its viewers. "In focusing the [either jurors' or jury's] attention in a very emotional way on the racial element of the crime, the images from the film invited them to view the instant crime as part of a pattern of police brutality, effectively asking them to redress this injustice."⁵⁸

In addition, the court considered that the jurors may have had concern that, in the wake of an acquittal for Ebens and Nevers, Detroit could erupt into violence as did Los Angeles following the Rodney King verdict. The court found that "the jurors' knowledge that the city was preparing for a possible riot may have caused them to fear an acquittal."⁵⁹

Eventually the convictions of both Nevers and Budzyn were successfully appealed.⁶⁰ Budzyn was re-tried in 1998. This time Budzyn was con-

55. *Budzyn*, 566 N.W.2d. at 236–37.

56. *Id.* at 237.

57. *Id.* at 238.

58. *Id.*

59. *Id.* at 239. The court relied on an affidavit from a single juror in concluding the jury would be hesitant to convict because of riot preparations:

During our deliberations, we were allowed to go home one night. While I was home, I saw a news report that in the event of a riot, they were going to close the freeways In addition to this information, I learned various other pieces of information at different times, both before and after the trial. I had learned that the National Guard was being put on guard for our verdict.

60. The Michigan Supreme Court held that the eyewitnesses (medical technicians who observed Nevers repeatedly bludgeon Green) were unimpeachable, and there was overwhelming evidence of his guilt, therefore the trial court's errors were harmless. In a decision written by District Judge Zatkoff, the Eastern District of Michigan applied the Michigan Court's analysis of the showing of *Malcolm X* to Nevers, but disagreed that evidence of his guilt was overwhelming, thereby granting his petition for

victed of involuntary manslaughter and sentenced to time already served. His conviction was upheld on appeal, but still he spent less than four years in jail for the death of Malice Green.⁶¹ Nevers was convicted of involuntary manslaughter as well, and sentenced to seven to fifteen years. Nevers served four years in prison awaiting his appeal, and his attorney estimated in July 2000 that he had a year to a year and a half left on his sentence.⁶² Recently, the Michigan Court of Appeals overturned his conviction. Their combined sentences will result in less than ten years total time served for the death of Malice Green.⁶³

B. Hate Crime: The Death of Vincent Chin

"The whole mood [in Detroit] was totally anti-Japanese. People who had Japanese cars were getting their cars shot at, and it didn't matter if they were white. And then if you were Asian, it was assumed that you were Japanese . . . and there was personal hostility towards us."⁶⁴

Vincent Chin's Chinese American parents adopted him from China in 1961 and brought him to Michigan. He became a United States citizen in 1965. At twenty-seven, he worked hard at his job as an engineer. He was to be married on June 21, 1982. His friends threw him a bachelor party on June 19, two days before the wedding. Chin and a group of four friends went to the Fancy Pants Lounge, a strip bar right outside of Detroit. There they had a few drinks, tipped the dancers generously, and generally carried on the all-American traditions associated with bachelor parties. Ronald Ebens, an assembly line foreman for Chrysler and his stepson, Michael Nitz, an unemployed Chrysler assembly line worker, sat across from Chin and his friends. Ebens began to yell racial slurs at Chin, calling

writ of habeas corpus, and released him from custody. Zatkoff cited the Michigan Supreme Court and added:

The movie *Malcolm X* was particularly harmful because of the undeniable parallels between the images and words of that film and the conduct alleged against the defendant The viewing of the movie by the jury cannot be dismissed as mere entertainment. The implication of viewing the Rodney King footage can scarcely be denied: This is what it looks like.

Nevers, 990 F. Supp. at 870. District Judge Zatkoff is a member of the Federalist Society, some members of which are considered conservative in the area of civil rights and criminal defendant rights. As such his grave concern for defendant Budzyn's constitutional rights was a departure from the doctrines espoused by the Federalist Society. See Trevor W. Coleman, *Walsh's Federalist Society can Divide Judiciary*, DETROIT FREE PRESS, July 8, 1999, at 10A.

61. *People v. Budzyn*, No. 212903, 2001 Mich. App. WL 1256126, at *21.

62. Associated Press. *Detroit Ex-Cop Sentenced in Fatal Beating*, May 17, 2000, available at 2000 WL 3665884.

63. *People v. Nevers*, No. 227401, 2003 Mich. App. WL 887614, at *1.

64. Alethea Yip, *Remembering Vincent Chin: Fifteen Years Later, a Murder in Detroit Remains a Turning Point in the APA Movement*, ASIAN WK., June 19, 1997, available at 1997 WL 11562081 (quoting statement of Helen Zia, Asian American activist and co-founder of American Citizens for Justice). Detroit's economy is dominated by the automotive industry, and when the industry suffered declines as a result of Japanese imports, some autoworkers responded with racist nativism.

him a “chink” and a “nip.”⁶⁵ Ebens stated, “It’s because of you little mother fu**ers that we’re out of work.”⁶⁶ Finally, after several exchanges across the bar, Chin walked up to Ebens and confronted him. A fistfight ensued in the bar, and both parties were removed from the bar by management. Once outside the bar, Ebens removed a baseball bat from his stepson’s car. Chin saw Ebens with the bat and fled the scene, running across a divided highway. Chin’s friends divided up, with Jimmy Choi following Chin on foot, and the other two in their vehicle. Ebens and Nitz, who were in their car, observed Choi, who was on foot, and asked him where his friend was. When Choi claimed that he did not know, Nitz threw a bottle at him. Choi eventually found Chin, and they fled to a popular McDonald’s hoping to find safety in numbers.

Meanwhile, Nitz and Ebens came across Jim Perry and offered him twenty dollars to help them find the “Chinese guy.” Ebens and Nitz found Chin and Choi in the McDonald’s parking lot. Chin and Choi attempted to flee again. Choi got away, but Nitz grabbed Chin in a bear hug from behind while Ebens beat Chin with the baseball bat on the head and back. Police officers who had been working security at McDonalds arrived on the scene and ordered Ebens to drop his bat. Chin was rushed to the hospital, where he lapsed into a deep coma. Doctor’s performed emergency brain surgery, but Chin’s brain ceased functioning. He was kept on a ventilator for four days. He was pronounced dead five days before he was to be married.⁶⁷

On March 16, 1983, Wayne County Judge Kaufman found Ebens and Nitz guilty of manslaughter after a plea bargain and sentenced each to three years probation and a \$3,000 fine. The prosecutor was not even present during this proceeding.⁶⁸ Judge Kaufman was quoted as saying,

Had it been a brutal murder, of course [Ebens and Nitz] would be in jail These weren’t the kind of men you send to jail. We’re talking about a man who’s held down a responsible job with the same company for eighteen years, and his son who is employed and a part-time student . . . these men are not going to go out and harm somebody else. I just don’t think that putting them in prison would do any good for them or for society. You don’t make the punishment fit the crime, you make the punishment fit the criminal.⁶⁹

Following intense activism by the Asian American community, the U.S. Justice Department filed charges against Ebens and Nitz for violating Chin’s civil rights and for conspiracy. In June of 1984, Nitz was acquitted

65. See *United States v. Ebens*, 800 F.2d 1422, 1427 (6th Cir. 1986). The facts of the Vincent Chin case have been condensed from this opinion.

66. *Id.*

67. Yip, *supra* note 64.

68. *Id.*

69. David A. Kaplan, *Film About a Fatal Beating Examines a Community*, N.Y. TIMES, July 16, 1989, at H27; see also Rhoda J. Yen, *Racial Stereotyping of Asians and Asian Americans and its Effect on Criminal Justice: A Reflection on the Wayne Lo Case*, 7 ASIAN L.J. 1, 11; see also PBS: *Who Killed Vincent Chin?* (National PBS Premiere Broadcast: July 1989) available at <http://www.naatanet.org/apatv/archives/vincentchin.html>; see also Johnson, *supra* note 9 at 417.

of all charges, and Ebens was acquitted of conspiracy but was charged with violating Chin's civil rights.⁷⁰ Ebens was sentenced to twenty-five years. However, his case went up on appeal, and he was released after posting a \$20,000 bond.⁷¹

In September 1986, the federal appeals court overturned Ebens's conviction on several evidentiary technicalities. The court cited the publicity surrounding the case, and the controversy over whether the prosecution had coached witnesses to convey that Chin's murder was motivated by racism.⁷²

Lisa Chan, a Detroit attorney who formed a group known as the American Citizens for Justice, was accused of coaching witnesses. She had been instrumental in publicizing the case. Ms. Chan traveled to Washington, D.C., to discuss the matter with [the] Assistant Attorney General in charge of the civil rights division of the Department of Justice to pursue the possibility of federal prosecution. Rallies were held in Detroit in which protesters held placards reading "Jail the racist killers" and "It's not fair," the latter a comment made by Chin before he lapsed into unconsciousness and died.⁷³

As evidence to support the claim that Chan coached witnesses, the defense obtained audiotapes of Chan at a meeting with the prosecution's witnesses. They wanted to introduce those tapes as evidence, as it was their belief that the tapes illustrated that the prosecution mistakenly assumed a racial motive for the crime. The defense alleged that the tapes showed collusion, witness tampering, and prior inconsistent statements. The Sixth Circuit agreed, and held that the tapes should have been admissible as they contained information "highly relevant and important to the defense."⁷⁴

Additionally, at trial, the prosecution introduced evidence of an incident between Ebens and an African American man that occurred in 1974. Ebens was at a bar and screamed racial slurs at Willie Davis, an African American. Things became heated, and Davis was asked to leave the bar to avoid a confrontation with Ebens. "The prosecution presented this evidence for the purposes of showing that Ebens was generally possessed of a bigoted mind and possessed requisite intent to [violate] Chin's civil rights."⁷⁵ The court held that this prior event was too remote in time to be relevant, and the trial court erred in refusing to strike it. Not only was the court concerned about the length of time between the Davis incident and

70. See Yip, *supra*, note 64.

71. Johnson, *supra* note 9, at 401-02.

72. Ebens, *supra* note 65.

73. Ebens, *supra* note 65, at 1430.

74. *Id.* Chan is quoted in the transcripts of the tapes in question:

The purpose of this meeting is so we can help each other remember exactly what happened, how it happened, when it happened, and all the minor details When it's a federal prosecution we're all going to have to be agreeing on this is what happened Let's all have it sort of down, have it down pat, is it five minutes or is it ten minutes . . . let's all agree. Otherwise you all look funny on the stand.

Id. at 1442-43.

75. *Id.* at 1432.

the Chin incident, it refused to see a link between racist comments spewed at an African American, and racially motivated violence in the Chin case. The prosecution presented evidence of the Davis incident to show proof of motive or intent.⁷⁶ The court disallowed this testimony:

The “other acts” which the government would have attributed to [Ebens] were statements containing racial slurs cast at Davis on account of his race The government sought to persuade the jury that the racial slurs made by Ebens evidenced a specific prejudice against minorities generally. Had the statement been made in the recent past, and against someone of the Oriental extraction, a strong case may have been made for the admission of such testimony under 404(b). A jury could then rationally have concluded that the racially insulting words were intended to persuade a patron to leave the bar The difficulty is that the comments about which Davis testified were directed to someone of a different race and were substantially remote in time⁷⁷

These racially charged incidents contributed to the reversal of Ebens’s conviction. The Justice Department requested a retrial, and the Eastern District Court of Michigan ordered a change of venue.⁷⁸ Ebens’s last trial occurred in Cincinnati.⁷⁹ Cincinnati was, in the early 1980s, a city that had had little exposure to Asian Pacific Americans. Out of 200 prospective jurors interviewed, only nineteen said they had ever encountered an Asian American.⁸⁰ The Cincinnati jury acquitted Ebens of all charges. No jail time was ever served by Ebens or his son for the death of Vincent Chin. However, they were fined \$3,780 for their crime.⁸¹

C. *Lessons Learned from the Deaths of Vincent and Malice*

Green and Chin were left devalued and expendable in the eyes of the criminal justice system. The similar outcome of both of these cases evidences the need for a coalition building along issues of racial justice for all people of color. In Ebens’s trial the court refused to entertain notions that there was a correlation between his racist actions against an African American man and his attack of Chin. “This indicates not only that we are raced, but also that we are raced in specific terms, and those terms are generally black and white. This has a particular applicability to Asian Americans demanding a third category that would recapture their sense of difference. As Steve Biko observed, “we can call ourselves brown or

76. FED. R. EVID., 404(b): Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

77. Ebens, 800 F.2d at 1433.

78. *United States v. Ebens*, 654 F.Supp. 144, 144 (E.D. Mich. 1987) (ordering Ebens’s trial to be moved to Cincinnati, Ohio, because the publicity surrounding the event prevented Ebens from receiving a fair and impartial trial in Michigan).

79. *Id.*

80. Yip, *supra* note 64.

81. Wilborn Hampton, *When Cultures Clash the Results are Fatal*, N.Y. TIMES, Nov. 23, 1998, at E4.

yellow until we are blue in the face, but it is unlikely that those terms will be adopted or will displace the vocabulary of the Black/White paradigm successfully."⁸² In other words, Ebens was racially aggressive with Chin as he was with Davis, an African American. The different outcomes of each incident may only be attributable to the fact that Davis left the bar, without confronting Ebens. Ebens did not treat these two men differently, nor did the criminal justice system make a distinction between those responsible for the deaths of Green and Chin.

The death of Malice Green, and the trials of his accused illustrate an extreme case of what it means to be raced as African American in the United States. Green was portrayed as a criminal, and as a violent drug addict.⁸³ The courts overthrew two jury verdicts based in large part on the jury's viewing of the movie, *Malcolm X*. These decisions completely ignore the reality that many of the jurors who watched the movie, highlighting injustices faced by people of color, lived those injustices everyday:

The possibility that a few police officers will absolutely violate department rules and procedures is never far from the minds of African Americans, no matter their station in life. The presence of racism in any community can, and sometimes does, cause American citizens to react emotionally and render less than clear judgment Racism has not and will not quell the desire of African Americans to fully exercise all the rights and responsibilities associated with democracy. If this were not true, then the four-hundred-year-old struggle for democracy and economic opportunity [for African Americans] would have been abandoned long ago.⁸⁴

Similarly, the death of Vincent Chin illustrates how the criminal justice system dehumanizes Asian Americans. Not one of the jurors in the Cincinnati trial had ever interacted with an Asian American. The initial trial judge did not consider Chin's murder, where the accused "swung a baseball bat at his head as if he were hitting a home run," to be a brutal murder.⁸⁵ The only logical conclusion could have been that Chin's murder was not brutal because he was perceived as the "other," a foreign interloper who did not belong and from whom judges and juries could disassociate.

IV. CONCLUSION

[The criminal justice system in the United States responds to "the other" by "subjecting the other to state violence, it teaches subordination: hurt what is not you, kill it, lock it up, make it go away."⁸⁶ Malice Green

82. Janine Young Kim, *Are Asians Black?: The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, 108 YALE L.J. 2385, 2403.

83. See Pete Waldmeir, *This Time, It's Hoped Budzyn Will Finally Get his Fair Trial*, DETROIT NEWS, Feb. 11, 1998, at C1. (referring to Green as a crack addict in an opinion piece about the incident). Waldmeir calls for justice for Budzyn in arguing for a fair trial and refers to Green's death as an unavoidable accident.

84. *Budzyn*, 566 N.W.2d (Mallett, C.J. dissenting).

85. *Lee*, *supra* 29 at 430. See also Yen, *supra* note 69; Johnson, *supra* note 9, at 417.

86. Matsuda, *supra* note 32, at 322.

and Vincent Chin both paid the ultimate price for being “the other.” They were killed with flashlights and baseball bats respectively, but racism caused their deaths and the racist racial project we call the criminal justice system allowed their killers to escape being held accountable for their crimes in a meaningful way. Faced with this reality, Asian Americans, African Americans, and people of color should recognize their connectedness, negotiate their common agendas and work towards the broad goal of anti-subordination. This means that modern civil rights organizations must reject essentialist constructions of racial identities. Specifically, the cases of Malice Green and Vincent Chin illustrated that the civil rights movement has failed to effect meaningful change in the criminal justice system—both when people of color are suspects and victims of crimes. African Americans civil rights organizations have for too long fought alone to remedy the racial injustices in the criminal justice system. Asian American civil rights organizations and indeed all coalitions interested in justice need to realize that the inequality in the criminal justice system is not just an issue that affects African Americans. Traditional civil rights organizations such as the NAACP Legal Defense Fund and the National Asian Pacific Legal Consortium must collaborate and mobilize their constituents to combat racism in criminal justice enforcement. For starters, civil rights organizations should be collaborating on hate crime sensitivity training for communities, they should work together to provide diversity workshops for local law enforcement and know-your-rights workshops on criminal law enforcement for communities and should pool resources to provide quality criminal defense to racial minorities. When justice is meted out to victims and suspects of crime based on skin color, the system fails not just people of color, but all of us.