

CRIMINALIZING FATHERHOOD IN THE CHILD SUPPORT SYSTEM AND THE SOCIAL  
INJUSTICE EXPERIENCES OF THE “CHILDLESS” AND THE “DEADBROKE”

By

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## **ABSTRACT**

### **CRIMINALIZING FATHERHOOD IN THE CHILD SUPPORT SYSTEM AND THE SOCIAL INJUSTICE EXPERIENCES OF THE “CHILDLESS” AND THE “DEADBROKE”**

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This study focuses on the criminalization of fatherhood through the child support system. By analyzing the changes or lack thereof in child support law, I use critical race theory and a culture of poverty framework to analyze how African American fathers are affected in family court because of cultural differences, social location, and lack of access to resources. Further, I use case law and discourse analysis to examine attributes that make African American men vulnerable to paternity fraud and how changes or lack of changes in the law disproportionately affect African American men. I conclude that the law must take social sciences into consideration when real differences occur within a quasi-safe space known as our judicial system. It is imperative to maintain parent child relationships where appropriate and acknowledge limitations on procreative freedoms when those relationships are created under false pretenses. The imperatives of maintaining stable parent-child relationships, of not punishing inherent procreative freedoms, and of incorporating social science research into better understanding the implications of current judicial legislation and practices are the most salient findings of the research.

*Keywords:* deadbeat dad, childless father, institutionalized racism, color blind racism, deadbroke

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## TABLE OF CONTENTS

INTRODUCTION .....	1
LITERATURE REVIEW.....	5
Fatherhood and Race .....	5
Fatherhood and Criminalization .....	7
Race and Criminalization .....	9
DATA AND METHODS.....	12
Methodological Limitations.....	14
FINDINGS AND DISCUSSION.....	18
Fatherhood, Criminalization, and Race .....	18
CONCLUSION.....	35
REFERENCES .....	37

## LIST OF TABLES

Table 1.1 Basic Demographic Information of Participants .....	16
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## INTRODUCTION

The relationship between African American men and fatherhood is very often stigmatized (Marsiglio, William 1993). Black males are often stereotyped as “deadbeat” fathers for failure to pay child support and not spending enough time with their children. Media coverage contributes to this stigmatization, often, for example, portraying black fathers as those who fail to pay child support or casting popular “family” program antagonists as African American men who cannot even remember the names of their children (i.e. *The Cleveland Show*).<sup>1</sup>

Perhaps the most salient formal socio-legal link between fathers and children is that surrounding child support arising within non-traditional families. In formal regulation of family autonomy, child support obligations, and the monitoring and enforcement of obligations arising from these relationships is a fairly new concept. For the most part, child support is regulated from state to state, however the federal government retains an overarching framework in minimum child support enforcement laws. In 2015, child support legislation celebrated its 40<sup>th</sup> anniversary, President Gerald Ford enacted Title IV-D or the child support program in 1975. The program was designed to reimburse the states for public assistance expenses given to single headed family households. Originally established to compensate children of divorced families, child support was enacted to give children the security of a two-parent income household. The original concept of child support has been transformed in the past 40 years with the decline in marriage, the increase in out of wedlock births, and the emergence and acceptance of non-traditional family structures and expectations.

The current child support laws have failed to keep up with the evolving status of the American family. In 1986, Congress enacted the Bradley Amendment that prohibited states from

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<sup>1</sup> *The Cleveland Show*. Fox. WJBK, Detroit. September 27, 2009-May 19, 2013. Television.

retroactively modifying child support arrangements. This meant that, regardless of the individual father's<sup>2</sup> situation child support orders could not be forgiven or reduced. In circumstantially severe cases, fathers who are in jail have lost their job or who are proven not to be a child's biological father are held responsible for child support. As extreme as this sounds, this happens more than we could hope in a society that thrives itself on justice and fairness. Although the law was intended to prevent wealthy fathers from evading their child support orders, the law as applied has largely affected men who do not fit into this class. The Personal Responsibility and Work Opportunity Reconciliation Act (1996) (PRWORA), often cited as one of the most significant impacts on child support, has been applied as an aggressive child support enforcement tactic to shift single mothers off of welfare. PRWORA required employers to report new employees so that they could be matched against child support orders to enforce automatic wage garnishes. We must note that in his 1994 State of the Union Address President Clinton said:

“[W]e will say to absent parents who aren't paying Child Support, if you are not providing for your children, we will garnish your wages, we will suspend your wages, we will suspend your license, we will track you across lines, and, if necessary, we will make some of you work off what you owe.”

This hinted at what was to come regarding child support regulation. Shortly after the enactment of PRWORA, President Clinton also signed into law the Deadbeat Parents Punishment Act of 1998 creating “new categories of federal felonies for the most egregious child support violators.” Fathers however still suffer unduly from this Act even if they do not qualify as egregious violators. Furthermore, the Child Support Performance Incentive Act (1998) has become the current foundation for child support. This Act penalizes states “for failure to meet data processing requirements and reforms incentive payments. Incentive payments are based on

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<sup>2</sup> Both fathers and mother can be responsible for child support, however I choose to classify child support obligors as fathers because fathers overwhelmingly represent the population of people paying child support.

paternity establishment, order establishment, current support collected, cases paying past due support, and cost effectiveness and on a percentage of collections. Incentive payments must be reinvested in the state's child support program.” This Act displays the government’s commitment to reimbursement of its own funds, but shows little commitment to providing justice to fathers who are victims of the system. This focus on reimbursement and collection of funds raises questions concerning the underlying rationale/philosophy of the legislation. The government’s concern with the collection of money demonstrates its clear relegation of general child welfare. For example, men providing in-kind child support and child support time commitments are considered impermissible and unacceptable ways of providing for children. In addition, the courts’ attempt to collect money from deadbeat dads is misplaced when the father is a dad by default.

Men who do not follow the convention of formal child support are not necessarily a part of the “deadbeat” dad population that legislatures seek to punish. Unfortunately, in legislative policy terms, there is no difference between fathers who support their children emotionally and financially through time spent and non-traditional means (i.e. informal support and in-kind support) and fathers who do not support their children through any means (Cammett 2006). A single focus on financial child support mandates is limited in its ends and provides no alternative to fathers who cannot conform to conventional noncustodial parenting. The alternative for these fathers, though not supported by the court is in-kind support and time spent. These intangible items are a direct showing to the child of fatherly love, care, and attention (Kane et al. 2015). Childless fathers or dads by default, those who are legally responsible for children though not by choice and not biologically linked to the children, suffer the same legal and social consequences as those who are deadbeat fathers: fines, incarceration, and a multitude of problems that come



after one is released from prison. From 2011 to 2014, media coverage of default fathers and childless fathers who fell victim to the child support system focused almost exclusively on African Americans<sup>3</sup>. I call these men victims as they were treated unfairly by the system through no fault of their own, having been punished for failing to pay child support for children they were not biologically linked to, spending time with their child, or abiding by the states' automatic wage garnishment. For these men, difficulties in maintaining legitimacy according to societal standards has caused problems that highlight the inequality of the judicial system. Goffman (2015) established a similar finding concerning legitimacy. This mismatch between perceived justice and the actual law exemplifies the work of Ellman et al (2015) regarding the public's view about what is fair, specifically what is fair in regards to child support and the actual law. In the absence of paternity fraud statutes and changes in child support enforcement laws, men face structural barriers that are arguably exacerbated due to their racial identity. Our judicial system is set up to criminalize African American men through fatherhood.

Within this framework of the criminalization of African American fatherhood, I address three research questions. (1) What relationship does the social location of individual fathers have with legal outcomes in parental rights/obligations hearings? (2) How do Black men experience paternity fraud cases? (3) How have legal changes in child support law affected Black men?

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<sup>3</sup> While stories featuring white men as victims of paternity fraud occurred at the time, these men were married or divorced within 300 days of the child's birth which legally adds an additional layer and thus I will not consider those fathers in this study.

## LITERATURE REVIEW

### *Fatherhood and Race*

Of the many negative stereotypes surrounding the African American family, the assumption that African American men do not spend time with or financially support their children is preeminent. In fact, African American men spend the same if not more time (i.e. daily interaction) with their children out of any other ethnicity group (Jones and Mosher 2013) and financially provide for their children through nontraditional means such as in-kind support (Kane et al. 2015) or informal support (i.e. support that goes directly to the child's mother.) Lewis (1986) calls for the equal provision of resources to both poor African Americans as well as middle-class white fathers. There is clear evidence that African American men place an emphasis on "being there" for their children as disciplinarians and role models rather than providing for them through traditional child support orders (Hamer 1997; Harris 2002). Though formal financial assistance is important, African American men see financial support as a way to support their children's mother, not necessarily the child, thus they forego making formal child support contributions to their children. In lieu of formal child support, African American fathers provide more in-kind support or informal support on a "needs basis." This is a common finding among both adolescent and low-income fathers (Allen and Doherty 2004; Hammond et al. 2011). The ability to provide one's child with tangible items instead of money the child may or may not receive directly has a sense of fulfillment attached to it (Kane et al. 2015).

Formal judicially mandated child support orders are often necessary to persuade fathers to financially support their child(ren) if a weak relationship exists between the father and the child's mother. Such judgments are enforced through tax or wage garnishment, but for fathers who are legitimately unable to provide consistent support to their child(ren) through financial

means, formal child support orders as the sole option undermines African American father's supportive role in the family. African American fathers view fatherhood differently from not only their European counterparts, but western society, and the government as well (Hamer 1997; Harris 2002). Local, state and federal authorities give little attention to the cultural and historical difference regarding African American parentage in family court (Hamer 1997), which makes it difficult for African American men who are disadvantaged due to their social location to participate in traditional parenting expectations. In contrast to these authorities, African American mothers may not seek formal child support orders against their children's father even though they desire financial support. They seem to acknowledge the value of the father not only outside of jail, that is if they are punished for failing to follow a court order, but effective co-parenting may benefit them more than a formal court order if the father is financially unable to pay (Connor and White 2007). This may also include in addition to money and gifts, a kinship and support system through the father's family. Through informal means of support, a willing father may provide in-kind support that will produce greater reward than that of a child support order thus they too contribute to this cultural difference in parentage among African American men by allowing them informal alternatives.

Walker et al. (2008) show that racial differences among noncompliant fathers have no statistically significant difference between child support orders among African Americans and whites. However, this is problematic because low income fathers are overly represented by African Americans. White men traditionally make more money than African American men and thus a difference in child support orders is to be expected. Socio-economic and cultural realities faced by African American men must be incorporated into the decision making process (Jordan-Zachery 2008) in order to identify men wrongly accused of failure to pay child support whether

that reason is paternity fraud<sup>4</sup> (i.e. men who have paternity wrongly attributed to them) or an inability to pay (i.e. men who make in-kind support or partial payments). On the contrary, while in kind support and informal support has the potential to remove children from poverty, one must still recognize how non-traditional means of child support may make a difference for the child, but does not contribute to the household overall. Informal child support contributions are in opposition to the original purpose of child support. However the original purpose of child support does not reflect the changing composition of the American family. Research has studied this in depth, suggesting that in-kind support limits the autonomy of the mother. This however is outside the scope of this research Nepomnyaschy, Lenna, and Irwin Garfinkel (2010); Kane, Jennifer B., Timothy J. Nelson, and Kathryn Edin (2015).

#### *Fatherhood and Criminalization*

For many fathers, failure to pay child support is subject to a felony conviction (this is the case in both Texas and Michigan) (WestLaw 2015; NCSL 2015). If a father receives a felony charge for failing to pay a child support order, he is in danger of losing a number of professional licenses or permits, voting rights, and a host of other rights and liberties. Jailing fathers for poverty is an inadequate exercise of our governance, arguably ethically and constitutionally challenging, it implies that our poor are disposable. Still, courts justify jailing fathers for failure to pay child support as failing to obey a court order. Technically fathers are not jailed for being poor, but instead are held in contempt of court for failure to abide by an order to pay. As Richard E. James frankly stated in, “Putting Fear Back into the Law and Debtors Back into Prison: Reforming the Debtor’s Prion System,” “any time you are in prison for failure to pay a debt or an obligation you are in debtor’s prison.” Despite laws meant to protect people from imprisonment

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<sup>4</sup> In the legal community “paternity fraud” is a legal term of art. However in this context I use paternity fraud in lay terms to express general cases of misattributed paternity.

for poverty, the courts mask this by framing child support as an “obligation to larger society” and suggesting support decrees and overdue payments are not debt (James 2002). As far as the courts are concerned, holding fathers in contempt of court for failure to pay child support and then jailing them is a legitimate exercise of police power. When debtor’s prison is used, it delays any progress and does very little to “encourage” fathers who do not have the means to pay child support (Brito et al. 2015). Not only does jail prevent men from providing for their children financially, it also hinders any prospects of employment upon release or alternatively endangers them of retaining a pre-existing job. This is particularly important for one of the case studies below, as the State of Michigan has been criticized for its unorthodox method of persuading deadbeat dads to follow their child support orders under former Attorney General Mike Cox (Goulah 2005).

Regardless of the reason, including incarceration, job loss, an increase in the custodial mother’s income or marital status, getting a child support order changed is quite challenging, just short of impossible. Thus an unfortunate event such as losing one’s job becomes a much larger issue for the father if he is unable to pay his child support. While jail time is not always the solution or most reasonable option, courts use the threat of jail to forcefully encourage men to abide by their child support orders. The threat of jail does not increase child support payments of fathers who truly cannot afford to pay. Debtor’s prison research as it pertains to the family is usually discussed in terms of divorce in social sciences, but legal scholars have explored how debtor’s prison can also apply to child support. What we do know about jailed fathers is limited because fathers jailed for child support delinquency is severely under-researched.

One researcher, (Bakerville 2004) does discuss the punishments meted out to fathers if they fail to pay child support or the like. In a court system partial to the mother, fathers may not

receive time they expect with their child and are punished when they defy their court ordered visitation. Not that they should not be punished for defying a court order to something as sensitive as the whereabouts of one's child, in a society where the "best interest of the child" results in the father paying child support for a child he may receive little to no time with or may not be biologically his, he is subject to challenges that the court often disregards which in some cases led to the threat of jail or substantial court fines. Inconsistent employment, identification, ability to travel, and access to legal representation is a common concern among African American men who are released from jail. This is prevalent not only here, but the literature as well (Cammett 2006).

This concern is intensified for men jailed for child support who, upon release, are still unable to pay their court ordered child support ultimately making them vulnerable to recidivism. Multiple arrests for failure to pay child support affects the everyday life of both the father whose liberty has been limited and the child who lacks the emotional and financial support of their "deadbroke" father. The presence of African American fathers also contributes to the behavior of adolescent males. When African American fathers are incarcerated, this prevents them from spending time with their children. This time spending aspect is particularly critical for African American adolescent boys who experience a rise in criminal activity and drug use in the absence of the father (Harris 2002); Mandara and Murray 2006; Coates, 2015).

### *Race and Criminalization*

Media representation fosters a false assumption of danger and criminality linked to race (Oliver, 2003). The media plays a large role in criminalizing African American men. Media portrayals show African American men as criminal, violent, and dangerous. For example, in the height of sexual assault allegations against comedian Bill Cosby, the media attacked not his

personal character, but his television persona Dr. Heathcliff “Cliff” Huxtable, a beloved media-generated father image in the African American community. African American men are often cast as drug dealers, pimps, rapists, gang bangers and the like. Through this, the media, especially the news media, not only creates, but sustains a stigma against African American men (Oliver 2003). It is not surprising to see African American men cast in roles in which they do not care for their children.

Most of the information people receive on crime comes from the news (Russell 1995) and because the media over represents African American men as deadbeat fathers in both fictional and non-fictional programming, viewers are likely to view this as reality (Marsiglio 1993). News stories that focus on African Americans are more likely to focus on crimes by African Americans than by their white counterparts (Oliver 2003). However the case studies for this research shifted the negative overtone to the government authorities. While these same media outlets have certainly played their part in establishing African American men as deadbeat fathers, these deadbeat dad series focused on African American men who were victims of the system. What the media called an unfair and biased system highlighted the ways in which African American men were being criminalized by the system through jails threats, jail, and substantial fines.

African American non-offenders have a harder time attaining a job than whites with a felony conviction. The challenges faced by African American felons are multiple (Levingston and Turetsky 2007). Drawing upon critical race theory, (Spjeldnes et. al. 2015) hypothesize that the negative effects of institutional policies and practices are associated with higher recidivism rates among African American fathers related to child support arrears. Here I explore related issues. Spjeldnes et. al. encourage race sensitive policies and I incorporate this in an attempt to examine how current laws are discriminatory against African American men in family court in

regards to the treatment of “deadbroke” and “childless” fathers.

Fathers who are jailed for child support are often left out of the data collection process thus their story is not being told. I contribute new data that highlights the systematic societal challenges that “fathers” face because of their social location (i.e. poor African American men) that dictate whether they are entitled to procreative freedoms through the recollections of the effected and those intimately related to the situation. Contributing to paternity fraud literature through a social science lens focuses on the social injustice experience of an over looked population of poor African American men.



## DATA AND METHODS

I begin with an anecdote. A Detroit family court judge ordered payment of \$30,000 in back child support for a child the defendant did not father, despite DNA testing and years of combating the child support system.. Intrigued, I investigated this unique case of fatherhood and law intersections further and learned that this case was far from unique. Similar cases shared commonalities: most strikingly that the males were African American. This stimulated me to explore the relationship between race, fatherhood, and the law specifically as it pertained to child support.

My research is based on a secondary data set of broad based media coverage, news reports and corroborating court documents collected between 2011 to 2014. The political affiliation of each media source, while not discussed in detail, is important because of how media frames its coverage and because of how that colors the views and reactions of particular media users and subscribers. Convenience sampling of media coverage of fatherhood, race, and child support cases yielded exemplary cases of poor African American men's experiences in family court. Critical case sampling techniques (see Patton 1990) and chain-referral ("snowball") sampling methods (see Kish, 1965) narrowed the initial data set to six select case studies<sup>5</sup>.

Information from all six cases (Table 1.1) facilitates the development of an overall profile of African American males' interaction with the family court system with specific reference to child support judgments. And detailed analyses of two "key informant" case studies enables a detailed interpretative, narrative analysis: a Detroit man, Mr. "D" and a Houston father, Mr. "H" (who was jailed despite paying the court ordered child support). These two detailed case studies allow a cross state comparison and each case study provides a detailed background of the father,

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<sup>5</sup> In a couple of the cases, the news report referenced the name of another man in the study.

his relationship with the mother, his relationship with the child, his journey through the court system, and the outcome and follow-up of the court's decision and judgment. Additional detailed information was extracted from Westlaw and LexisNexis, an online legal research service for legal and law related materials and services. Using Westlaw and LexisNexis was imperative not only to receive additional information regarding my case studies, but using a legal research tool also verified the information given by the media coverage. Such corroboration adds methodological validity and reliability, strengthens my interpretative findings, and minimizes speculation and false, or over interpretation.

Detailed case study analysis revealed significant overlap in not only their experience, but in their backgrounds and in the consequences of their situation and their positionality. This led me to complete a discourse analysis, (see Ruiz 2009), of the news reports, the court reports, and the laws to explore, describe and explain the “micro-aggressions” occurring between the system which collectively includes judges, lawyers, and laws and the plaintiffs. Records of court proceedings and television programs (the media) are typical material for sociological discourse analysis referred to as spontaneous discourse—discourse produced by participants in their everyday lives. In looking at the substance of each situation I examined the court opinion, the demeanor of the speaker when visual was provided (the speaker was a judge or lawyer), the tone of voice when audio was provided (the speaker was a judge or lawyer), the choice of words and the meaning behind the language used. Instead of providing a numerical measure for each category considered, each case was considered in its totality to illustrate how the system functions as a vehicle for micro-aggression that disadvantages poor African American men in family court. Grounded in discourse analysis it is useful to consider intersubjectivity in interpreting the actions of the system in order to understand interactions between the system and

defendants. In communicating with figures of power we may rely on intersubjectivity to access empathy because lawyers, but especially judges are often gatekeepers to justice due to the discretion they hold in sentencing. When judges fail to use intersubjectivity when interacting with different disadvantaged populations of people it is clear where a lapse in equality may result.

### *Methodological Limitations*

Internet-sourced case studies under-count the number of cases who face family court challenges and are not generalizable to any larger population. It should be noted that white men experience paternity fraud challenges similar to the African American men in my study. The white men found during my convenience sampling were married or recently divorced and thus have different paternity fraud implications than that of a never married man. When a child is born during the course of a marriage (or shortly before or after), that child is presumed to be a child of the marriage. Married or recently divorced men are ineligible for this case study as it pertains to paternity fraud. Mr. H's situation is also different from the married white men found in my convenience sampling because Mr. H is not asserting paternity fraud, but mistreatment of the system.

Furthermore, framing allows news outlets to “spin” situations as they see fit and thus choosing African American men as focal points for deadbeat dad exposes could possibly be a ploy to identify weaknesses in the court system or intentionally make the family courts seem biased against African American men. To accomplish this, the media could have selectively chosen to ignore similarly situated child support stories involving men of other ethnicities. The media has traditionally portrayed African Americans in a negative light Page, Helan E. (1997), especially in cases of parenting, and thus it was quite odd to see multiple news outlets over a three

year period air stories that reflect the injustice that African American fathers face in the court system. It is likely that I would have found at least one man of another ethnicity if the information were available.

In selecting cases I refrained from using ethnicity to search for cases and instead used “man,” “jailed,” and “child support” as key identifiers. None of the media outlets emphasized the race of the men in the case studies, but rather the challenges men face in disputing paternity. Only after gathering the cases could one start to draw connections between the ethnicity of the men and the people in power. Furthermore, it is possible to ignore inter-subjectivity and see the interaction of the system and the men as nothing more than a judge or lawyer applying the law to which these men broke. Taken individually it is “easy” to say a judge or lawyer was just following the law and taken together it is much “harder” to ignore that there is a structure versus an agency issue at play here. As an alternative to critical case sampling, one could use a legal database and identify men who suffer from paternity fraud using search terms, use random sampling to pick the cases and then similarly analyze the language of the court and the law at issue. However, this would exclude much of the demographic data used in this case. Likewise the video recordings shown by the news gave information that would not be captured in a court opinion. Family court proceedings are often limited in information to protect the identity of the youth involved as well as the privacy of the family. When the information is collected from the news, information not typical of a court opinion is provided and the exposure allows for others to come forward with their story as well, thus using the court documents and the information they provided in their news segments made for a more complete story. Lastly, I chose to analyze news reports because the news allowed for me to understand the situation from the victim’s point of view. Outside of directly interviewing these men myself, there was no other way to receive the

important information that would not be available in any other form. Court opinions not only give validity to the information in the media, but is also a comprehensive recollection of the facts, law, analysis, and reasoning of the judge in deciding why a case is decided the way it is.

Table 1.1

Basic Demographic Information of Participants

<i>Participant</i>	<b>Mr. D</b>	<b>Mr. H</b>	<b>Mr. WC</b>	<b>Mr. RT</b>	<b>Mr. RJ</b>	<b>Mr. FW</b>
<i>State</i>	Michigan	Texas	Texas	Texas	Texas	Texas
<i>Judge</i>	Kathleen McCarthy	Lisa Millard				
<i>Selective Language</i>	<p>“I am outraged that Mr. [D] for two and a half decades failed to take this matter seriously.”</p> <p>“I am outraged at the media for the willful misrepresentations of the facts of this case.”</p>	<p>“Mr. [H] likes to make excuses, but he did not follow the court-ordered child support.”</p>	<p>“There’s a reason he thought he was the father. He’s not an innocent player, he frankly must have slept with the woman.”</p>			
<i>Education</i>	8 <sup>th</sup> grade	High School			High school	High School
<i>Age</i>	Early to Mid-40’s	43 years old. Last reported June 2014	Minimally 26 years old, based on appearance likely much older.	Mid-age	Mid-age	31 years old at the time.
<i>Criminal Record</i>	Previous criminal record. Jail time as a result of child support case.	Jail time as a result of child support case				Jail time as a result of child support case
<i>Financial and Social Consequences</i>	No money/job Lost job and almost homeless. Biological father is in and has been in the future. State not holding him or mother accountable.	Lost job. Strained relationship with son.	Unable to pay electricity bill and keep food in the house.	Unable to pay bills.	Unable to keep food in the house. Left with \$23.00 at the end of each month. Lost home and car.	Strained marriage and relationship with biological children.

Table 1.1 (cont'd)

<i>Law</i>	Three years to file a motion with the court after the child's birth or within one year after the order of filiation is entered.	Change in the law.	Current law does not forgive back child support	Current law is not retroactive.		
<i>Resources</i>	Lacked access to lawyer.	Attained lawyer			Access to attorney	Access to attorney
<i>Ruling</i>	Warrant out for arrest and \$30,000.00 Turned self in	Warrant out for arrest. Held in contempt for late payments. Sentenced to jail and attorney fees totaling \$3,671.00. Turned self in. Currently on probation for failure to pay child support.	\$21,000.00 owed in back child support. Government froze 401(k).	\$52,000.00 owed in back child support. \$13,000.00 is in interest. Government intercepts paychecks and income taxes.	Pays \$1,400.00 a month for two children. 40% of income	\$50,000.00 owed in back child support. Jailed for back child support. Paid \$1300.00 to Attorney General Office court and administration fees and medical for the mother.
<i>Proof of Error</i>	DNA	Clerical error. Multiple errors regarding court case including basic logistics.	DNA	DNA	DNA	DNA
<i>Entry into child support system</i>	Welfare Application	Birth father	Named on birth certificate			

## FINDINGS AND DISCUSSION

### *Fatherhood, Criminalization, and Race*

This paper highlights the common social injustice experiences among poor African American men in the child support system. Current research on men within the United States child support system is centered on men who assert agency by participating in procreation. Men who fall victim to paternity fraud, the “childless”, are often ignored in the social sciences. The social challenges they face not only after suffering from paternity fraud, but also their circumstances or their “social location” before they enter the child support system are optimal for getting lost, forgotten, or neglected by our justice system and makes them prime candidates for paternity fraud.

In the United States, once a legal parent-child relationship has been established through the courts, it is not simple to disestablish paternity. When paternity is disestablished as seen in the case studies, it is often the “fathers” and not the state or additional actors who literally and figuratively pay the consequences. As a result of paternity disestablishment, there are men who are financially and socially punished in the name of “the best interest of the child”<sup>6</sup>. Ensuring the well-being of our children at the expense of men who historically lack power and political influence speaks to the structured inequality inherent in our judicial system. The Clinton administration’s Personal Responsibility and Work Opportunity Act of 1996 shifted financial responsibility of the poor from the government to the individual; the individual being the father in the case of my research. While this lowered the number of individuals on welfare it raised the number of people in poverty and made failing to pay child support a felony.

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<sup>6</sup> The “best interest of the child” is a legal term of art. Defined as, “[a] standard by which a court determines what arrangements would be to a child's greatest benefit, often used in deciding child-custody, [child support,] and visitation matters and in deciding whether to approve an adoption or a guardianship.

Using Jones' (2000) definition of structural inequality I see racism as effectively operating in a post-racial society. Jones, defines institutionalized racism as:

“differential access to the goods, services, and opportunities of society by race. Institutionalized racism is normative, sometimes legalized, and often manifests as inherited disadvantage. It is structural, having been codified in our institution of custom, practice, and the law, so there need not be an identifiable perpetrator. Indeed, institutionalized racism is often evident as inaction in the face of need.” Camara, Phyllis Jones (2000) pg. 1212.

Child support is defined as, “the money owed or paid by one parent to the other for the expenses incurred for children of the [relationship]” Black's Law Dictionary (10th ed. 2014). With the exception of Mr. H for each man the story is the same. Years after the filing of a child support order and attempts to navigate the system with little to no legal guidance these men are still in court attempting to have their child support orders terminated. In all cases the men received DNA testing which proved they did not father the child in question, however DNA proof is not enough to disestablish paternity.

My case study research shows that in terms of material conditions, Mr. D's 8<sup>th</sup> grade education did not equip him with the necessary tools to navigate the Friends of the Court. Mr. D had the lowest education out of all of the men in this study, but, all of the men faced similar challenges. A public high school education is inadequate preparation to file taxes, draft a resume, or use a computer let alone navigate the legal terrains of the family courts. A college education and three years of law school and in most instances two comprehensive exams is deemed necessary for competence in the law. This inadequacy of education is reflected across all participants in the study. Ignorance of the law is not an acceptable excuse for inadequate self-representation.

Furthermore, both Mr. D and Mr. H struggled with attaining and keeping employment. Mr. D was arrested for being a “deadbeat” dad while Mr. H did jail time for failing to pay child



support after a series of hearings. Both were set to turn themselves in after the judges in their cases returned unfavorable decisions. For the men in this study, income is particularly problematic, a warrant<sup>7</sup> for failure to pay child support result in felonies in Michigan and Texas. Without the power and stability derived from adequate employment, these men faced insurmountable support payments, difficulty paying everyday bills, difficulty keeping food in the home and unstable housing. African Americans historically lack power and political influence. The concept of power includes, but is not limited to access to information, resources, and voice. After Mr. D was arrested for his deadbeat dad status he tried to correct the issue with no money, no attorney, and little to no help from the courts. Access to adequate goods and services are among some of the challenges faced by the defendants. Before the defendants even reach the threshold of the system they must overcome barriers upon entry in navigating the child support system. In Detroit, non-ownership of an automobile limits mobility options to an often dangerous and unreliable public transportation system.<sup>8</sup> The Friends of the Court system itself received overwhelmingly negative reviews from guests on Google Review, YellowPages, and a Facebook page dedicated to dissatisfied customers, no such page existed for satisfied customers. Most noticeably among the complaints received were from people just like Mr. D. Wayne County Friend of the Court customers cite telephone wait times ranging between more than 20 minutes to roughly two hours, multiple telephone call attempts, busy telephone lines, and full voicemail inboxes. Aside from reaching the office by telephone, customers cite difficulty in finding and then paying for parking, going through a metal detector and body search, as well as processing

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<sup>7</sup> A warrant issued by a disinterested magistrate after a showing of probable cause, directing a law-enforcement officer to arrest and take a person into custody. Black's Law Dictionary (10<sup>th</sup> ed. 2014)

<sup>8</sup> Since 2013 Detroit Department of Transportation (DDOT) has reported a range of fatal stabbings, drive bys, assaults by bus drivers, strikes, bedbugs, intoxicated drivers, and assaults on drivers which prompted driver sick outs.

and servicing. One must have the time, money, and luxury to sit on hold or take the time off of work to go through this tedious process that resembles a trip to the airport without the chance that there is an enjoyable experience waiting on the other side.

Lack of access to legal representation compounds the defendants' difficulties. Out of six cases it is unclear whether each participant was able to attain a lawyer. However if left with \$23.00 at the end of each month it is unlikely that, that money is going toward the payment of a lawyer. Mr. D navigated the legal system for several years without a lawyer citing finances as a reason. It was not until the local news station covered his story and a lawyer volunteered her services pro bono that Mr. D received adequate legal representation. Each case study expressed difficulty in navigating the system and cited the news as a way to get their story out to the public in the hopes of receiving assistance. *Turner v. Rogers*<sup>9</sup>, a 2011 United States Supreme Court case, held that a state is not required to provide a lawyer for defendants in civil matters such as family court proceedings. However as Mr. D and Mr. H experienced, family court involves much more than sitting down and talking through one's issues. In addition to motions and other relevant paperwork, not only can a law change with little notice, but timelines and deadlines must be adhered to. Mr. D failed to file a motion within three years after the child in question's birth or within one year after the order of filiation was entered. A modified child support statute made it legal to sentence fathers like Mr. H who pay their child support to jail on a technicality.

Legalese like "motion" and "order of filiation" are difficult for a lay person to understand without the assistance of a trained legal professional. In Michigan, before a child support order can be enforced, paternity must be establish either by DNA testing or voluntary acknowledgement. The State of Michigan did not adhere to the proper channels in establishing

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<sup>9</sup> *Turner v Rogers*, 131 S. Ct. 2507, 564 U.S., 180 L. Ed. 2d 452 (2011).

paternity in Mr. D's case. There are other men just like Mr. D who have been overlooked by the system. Michigan does not have paternity fraud laws that relieve men of child support obligations once DNA testing proves he is not the father, this is why Mr. D lacked any legal remedy. When there was no response from Mr. D, the courts legally listed him as the father when Michigan law clearly establishes how a court may establish paternity. This is problematic. There is no protocol set in place in the State of Michigan to protect men like Mr. D. Courts accept the word of mothers and do little to verify whether the names on birth certificates or welfare applications are biological parents.

Moreover, indigent men like Mr. D have very few resources while in prison or upon release. It is the state's responsibility to protect its indigent citizens for this very reason. The court could have discovered why Mr. D did not respond to his summons, because he was in the custody of the state, but it did not. Though Mr. D was eventually able to overcome the back child support order and its interest, the state did not forgive the monies it provided to the mother in welfare benefits and so like the other fathers Mr. D is still responsible for "back child support" owed to their respective states. It is not actual child support that is due, but the state is requiring Mr. D reimburse it for the welfare aid it provided to the mother, making child support more of an ends than a means. The state is concerned that it receives its money however it is not concerned with whether the money is coming from the person who ought to pay. The judges in Mr. D's case allege that he waited 25 years to take his child support case seriously, however this implies that Mr. D did not attempt to mitigate his child support obligation for 25 years, this is not true. In the last 25 years with little guidance Mr. D showed up for many court dates and supplied the court with changes in his living arrangements. The court's argument rests on him waiting too late to disestablish paternity after a missed court date made him the dad by default. During his

interviews Mr. D often cited that his situation was unfair and that "[he] just didn't understand." The judge criticized him for not taking care of his responsibilities earlier; however in accordance to white fathers African American men are expected to perform similarly (see Brito et al. 2015) in a judicial system that has historically treated them as inferior and has failed to honor their constitutional rights as human beings as well as ignore the effects of the discriminatory behavior created by our forefathers.

The case studies from Texas experienced a different set of challenges than their Detroit counterpart. For example, the largest complaints for bus transportation are late buses and safety. Unlike Detroit however, I found no incidents related to strikes or physical attacks at the hands of the customers or bus drivers. Likewise, in Texas, the Harris County Family Court division received a satisfactory review from its guests, this was much different from Detroit where almost every guest review was negative. Harris County Family Court customers complained of wait times, inconvenient parking, and judge conduct. Although Harris County received a somewhat average rating for its performance, the men in this study had the same experience as their Detroit counterpart.

Within a framework of institutionalized racism African-American men from Texas experienced differential access to justice in the justice system. Different from Mr. D in Michigan, Mr. H is the biological father of the child in question. Mr. H spent time in jail for the very thing he is supposed to do, pay child support. In the U.S., when a child support order is established, the custodial parent, in this case the mother and most often the mother, is required to turn in the child support order to the non-custodial parent's employer. After the paperwork is processed the state automatically garnishes the income source of the non-custodial parent, the garnishment process is left up to the state the non-custodial parent resides in and the employer of

the non-custodial parent. After the court hearing, the father's sole responsibility is to stay gainfully employed to support his child. In Mr. H's case, a clerical error at his employer's hands resulted in an incorrect amount of child support taken out of his check each month. This left Mr. H owing child support, however Mr. H paid his child support in full once he realized an error had occurred. Still he was sentenced to six months in jail and owed attorney fees to his child's mother.

Establishing paternity is often challenging as the men in these cases acknowledged. The mother can deny the father access to the child in order to complete a paternity test, men may be unaware of the physical location of the mother and child, and testing done through the court is often too expensive. The party requesting the test is the responsible party as far as payment. Other options available to men may also be unknown. For example, over the counter paternity testing is a cheaper (it is not cheap by any means) means of getting a paternity test completed<sup>10</sup>. When finances are a problem, which they often are, not only is attaining a lawyer expensive, but so is a paternity test. Lawyers encourage men to go the over-the-counter route when finances are an issue. However, the court imposes an additional fee for processing an over the counter paternity test often making the over the counter test just as unattainable as the one provided by the court. Free tests in Texas are only provided to men who are not already the legal father. In addition, men may not know that over the counter paternity testing is an option or men may think over the counter testing is not a reliable means of testing and thus still go through the court. When men rely on monogamous relationships to determine paternity or depend on the government to be fair, they risk facing additional and avoidable barriers.

According to Jones (2008), "voice" as a layer of power includes representation in the

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<sup>10</sup> Only FW used this option.

government and control of the media. The presiding judges over Mr. D and Mr. H's cases were both white women. The make-up of the courts where Mr. D and Mr. H's cases were heard do not reflect the population of people it serves. As of 2014, 82.7% of Detroit's residents identified as Black/African American and 23.7% of Houston's resident's identified as Black/African (U.S. Census Bureau, 2014). In Detroit the individuals with decision making powers do not reflect that of the community and in Houston those with decision making power out number people of color. Both Harris and Wayne County, representing Texas and Michigan respectively, lack presiding judges of color and women have a slight majority. In Mr. D's case, the judge reprimanded him noting that she was "outraged that Mr. D for two and a half decades failed to take th[e] matter seriously." The judge in Mr. D's case is similar to Bourne's perspective (court attorney in Brito et al. 2015) who could only see Mr. D's individual effort and abilities, and not barriers to his race.

Brito et. al. (2015) argues that this is a result of post racism ideology. Through our current laws we have the right to choose to procreate or choose not to procreate<sup>11</sup>, even so our current system is set up so that fathers lose the right to parent<sup>12</sup> or the right not to parent. The same judge also criticized the media's coverage of the story calling it willful misrepresentation of the facts and the court. Whether the facts in this case were misrepresented is subjective, but what is clear is that Mr. D was defrauded and key actors of the judicial system failed to acknowledge the role the judicial system played as a whole in counteracting Mr. D from meeting societal expectations. A second judge in Mr. D's case, also a white women, placed blame for the misconduct on the independent contractor the court hired in order to ensure that life altering situations such as this one are properly taken care of, not the system that made the decision to

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<sup>11</sup> Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 5 L. Ed. 2d 147 (1973).

<sup>12</sup> Michael H. v. Gerald D., 491 U.S. 110, 109 S. Ct. 2333, 105 L. Ed. 2d 91 (1989).

hire outside contractors.

This judge's behavior mirrored that of the first judge stating she too was "outraged" that Mr. D waited so long to take his matter seriously and attacked the media for its "willful" misrepresentation, this time going as far as criticizing the individual reporter who covered Mr. D's story. The attorney in this case applauded the media for reporting Mr. D's story which ultimately led her to take on his case pro bono. In addition to supporting the language used by the first judge, the second judge spoke of the "inactions" of Mr. D that ultimately placed him in his current position quoting Jean-Baptiste, "it is not only for what we do that we are held responsible, but also for what we do not do."

In the justice system, punishment for inaction is selective. In criminal law, an area of law that requires a lawyer, failure to act is often not punished even when one's failure to act results in death. However in family law, as we see in this case, failure to act result in \$30,000 debt and the threat of jail. The judge in Mr. D's case mentions that despite the misconduct of the independent contractor that Mr. D was in fact properly notified as he personally appeared in court two months after his incarceration release and eventually made child support payments. Despite this, two months after one is released from the penal system, the odds are against someone with Mr. D's background and considering Mr. D's current situation he has not beaten the odds.

In many of cases, the court seemed unwilling to admit its part when errors occurred. The constitutional rights and freedoms of each of these men has been challenged yet little has been done to make the wrongs right. The emphasis placed on the "inactions" of Mr. D much like the first judge attributed the situation to Mr. D's own personal failings and not that of the judicial system or solely on the child's mother who listed Mr. D as her child's father on her welfare application. The judge ended her opinion by condescendingly suggesting that Mr. D, "finally

take responsibility [for his son and], if nothing else, teach him to take responsibility for his behavior or suffer the consequences.” It was not Mr. D’s behavior as implied by the judge that caused Mr. D’s current situation. While Judge Snow may have intended her opinion to be constructive and positive in her ruling, her word choice can be interpreted as structurally racist as her own inaction failed to aid Mr. D. In the face of need, as a person in position of power, she used her discretion not to help Mr. D, but to further punish him. Judges McCarthy and Snow’s assumption that Mr. D waited 25 years to challenge his child support proceeding represents the micro-aggressions apparent in the judicial system.

“Micro-aggressions are subtle insults (verbal, nonverbal, and/or visual) directed toward people of color, often automatically or unconsciously” (Solorzano and Yosso. 2000). To the judges, Mr. D had the means and/or knowledge to have his child support claim dropped. The judges in this case, however, were familiar with Mr. D’s case including his background and the evidence supporting fault at the hands of the court, yet they both still attributed what was a clear failure of the judicial system to Mr. D personally. Without directly asking Judges McCarthy and Snow what they meant by their words it is difficult to speculate. Taken at face value, one can interpret Judge McCarthy and Snow’s words as their perception of Mr. D as a person versus what outside influences may have intercepted Mr. D’s actions.

Judge McCarthy and Snow’s presumed superiority allowed them to cast Mr. D as incompetent, lazy, and care-free. All terms associated with African Americans. Patricia Hill Collins in *Black Sexual Politics: African American, gender, and the new racism* (2004) discusses the effects of the “welfare queen” and the assumed work ethics of young African American men that in turn mature into adult men with the same work ethic who choose not to work or be fathers to their children. These “controlling images”, the notion that African Americans have poor work



ethic, “failed to take the matter seriously” or make excuses for their social situations, Collins argues becomes “commonsense truths” for whites that has and continues to permeate American culture. As family court judges, McCarthy and Snow hold discretion in sentencing and found it appropriate to punish Mr. D. DNA testing exonerates defendants years after they have been sentenced to prison, yet in this case DNA was not good enough to release Mr. D from paternal obligations. In Detroit a predominately African American area, judges hear and see the same stories every day from the same Black faces. Because they lack the individual experience it is simple to internally categorize all African American men to be incompetent lazy men who wait to do things.

Lawyers with similar superiority attitudes presented similar conduct to that of the judge. When interviewed about one case in Texas, a white woman lawyer used language in her interview that attributed the situation as the personal failing of the man instead of the faulty system. When asked about what she thought, she responded, “There’s a reason he thought he was the father. He’s not an innocent player, he frankly must have slept with the woman.” Her choice of words prompted the moderator to stop her and comment on the nature of her strong language. The lawyer’s need to comment of his sexual activity supports slut shaming and the stereotypical notion that African American men are hypersexual beings who cannot control their urges Tucker, Linda (2003); Love, Bettina L (2009). Whether the man slept with the woman who listed him on the child’s birth certificate is irrelevant as to whether he deserves justice. She concluded with saying the state is entitled to collect on his debt and he should have paid the money the state says he owes. This lawyer much like the judges in Mr. D’s case are unsympathetic and non-empathetic to the challenges that these men face. The lawyer’s comments are illustrative of pervasive and unconscious racism.

Likewise in Mr. H's case, Judge Millard stated, "Mr. [H] likes to make excuses, but he did not follow the court-ordered child support." While Mr. H did not follow the court order, he had to overcome barriers erected by both his employer and the state. A parent whose wages are garnished by the state has no control over how and when money is taken out of his or her check. The judge criticized Mr. H because he had previously been late on his child support because he was unemployed. Mr. H did not stay unemployed for long as evidenced by the fact that upon starting his new job the clerical error occurred. The judge in this case attributed the employer's actions as the actions of Mr. H. Mr. H was still paying child support which is a lot more than what many kids receive. In regards to payments the judge stated, "I usually give them a chance to pay." However "on their second contempt I send them to jail." Sending fathers to jail who are willing to pay child support for their child is a major problem in our legal system.

African American boys suffer when their fathers are in jail. According to Collins, when African American men are absent from the family this negatively affects the family as a whole, but particularly male children (Collins, 2004). African American boys experience the absence of positive male role models in their personal life as well as the media. As these young men age they express fear for an inability to care for their own children because they lacked a father in their youth. The mass incarceration of African American men sends a message to African American boys that incarceration is both normal and expected. This influence has the potential to multiply if the Black face behind a glass or bar barrier is one's father. This father at no fault of his own was sentenced to jail for factors outside of his control. Once given the needed information to make the situation right, Mr. H turned himself in and spent time in jail. Upon his release he spoke on how the process has impacted his finances and his relationship with his son. If late on his child support again for any reason, a clerical error or unemployment, Mr. H will

return to jail. Unfortunately, child support payments are not lowered or stopped while one is completing a jail sentence. Judge Millard failed to see that Mr. H would be more beneficial to his son out rather than in jail and used her discretion to send Mr. H to jail instead of act in the face of need. Mr. H exemplifies a “deadbroke” versus a deadbeat dad.

Laws like the one that made it legal to jail fathers like Mr. H act as a micro-aggression in themselves. In the Texas legislature, people of color make up less than 20% of the House and 22% of the Senate. Lisa Giovinazzo, one of the lawyers providing commentary on a Texas case mentioned that Texas legislatures have changed and manipulated child support laws possibly to increase funding sources to the state. Two major law changes affected the men in Texas, starting with the 83<sup>rd</sup> Texas Legislature’s repeal of HB 847. *Texas Family Code Section 157.162(d)* made jail a viable sentence option for parents who were in contempt of failure to pay child support. This child support law does a poor job of differentiating between fathers who are evading their responsibilities and fathers who have the desire and will to pay.

There is little research on fathers and compliance rates and the available data is quite dated and tells us little about the ethnicity and social economic status of the fathers. According to the data collected between 1994-2002 we know that fathers with children by African American women have the lowest compliance rate when socioeconomic and noneconomic controls are considered<sup>13</sup>. This type of data is necessary if legislatures seek to encourage men to go through the proper child support channels. Lacking this data, legislatures are unable to make culturally and ethnically sensitive laws. Cultural sensitivity is important as research has shown that in lieu of formal child support orders African American fathers are more likely to provide in-kind support Kane, J. B., Nelson, T. J. and Edin, K. (2015); Craigie, Terry-ann L. (2012); Maldonado,

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<sup>13</sup> [http://www.acf.hhs.gov/sites/default/files/ocse/dcl\\_07\\_43a.pdf](http://www.acf.hhs.gov/sites/default/files/ocse/dcl_07_43a.pdf).

Solangel (2006). When formal child support is the sole form of acceptable child support we are missing out on a potentially viable option to child poverty.

In the past in Texas, similar to the case in Detroit, if a man did not challenge a paternity claim by the time the child was four he had no legal recourse even if a DNA test proved a man did not father a child. Similarly, if a man voluntarily acknowledged his paternity, he had 60 days to contest before he lost legal recourse. In 2011, Texas passed SB 785, Texas Family Code section 161.005 made it possible for men to challenge paternity even after a child's four year mark.

This law came with a stipulation. When first introduced the law was only available to all for a short period of time. If one was not in a position to learn of the law change then after that established date recourse was no longer available. In addition, for the men who were able to take advantage of the law, the law is not retroactive, meaning a back child support order is still due. This non-retroactive stipulation was a key component to getting the law passed. For some of the men in this study, this law failed to help the men who needed it the most, men who are unaware of their rights, without access to legal counselor, and victims of paternity fraud. From the cases, reported these men are poor African American men. Even though the men who benefit from the law lose the fear of being jailed and the government returns any lien on revenue and licensing, the men do not receive any of the money back that they spent on child support. Once a non-custodial parent is three months behind in child support the government reserves the right to suspend licenses including driving, professional, and any recreational license held by the parent. Additional punishments include frozen assets, wage interception including taxes, lottery, and employment, and travel restrictions.

This is particularly an issue for men like Mr. H who is actively involved in their child's

life and provides no incentive to continue caring for one's child expecting punishment for abiding by the system as well as not abiding by the system. In situations where a parent is incarcerated with an active child support order, Texas requires the “correct legal papers” to be filed according to the Attorney General’s website. This can be done by going to the law library and receiving assistance from the librarian. While this is a nice sentiment by the State of Texas, the challenges involved with an indigent's ability to access the law library are formidable. The challenges Mr. H and persons like Mr. H face when navigating the system with help are challenges magnified for incarcerated parents. During Mr. H's interviews he expressed confusion, disappointment in the system, and a fear of losing his job, home and car.

This fear and confusion was found across all men in this study. Once released, fathers are then advised to “pay child support regularly while you are looking for work” and use the internet to search for prospective jobs. While it is difficult for anyone to receive work after being released from prison, African American men who do not have a felony offense have a difficult time getting a job over a white man who has a felony offense. The prospects for an African American man with a felony offense are even lower. Texas, however, encourages fathers to pay what they can to minimize punishment, an unrealistic expectation. The state requires noncustodial parents to pay child support and rigorously enforces this through an automatic wage garnishment. Mr. H spent time with his child and in some instances spent more time with his child than was authorized by the court. He was held in contempt and fined for doing the very thing African American fathers are criticized for not doing: parenting. Not only financially parenting his child, but emotionally as well. Fathers like Mr. H are often disadvantaged regarding time spent in custody agreements, according to societal standards fathers should pay and spend time with their children yet we punish them when they do just that.

*In Racism Without Racists: Color-blind Racism and the Persistence of Racial Inequality in America*, Bonilla-Silva identifies four abstracts for color-blind racism: abstract liberalism, naturalization, cultural racism, and minimization of racism. According to Bonilla-Silva, abstract liberalism involves economic liberalism (e.g. choice and individualism) in an abstract manner. The behavior and actions of the judges, lawyers, and laws subtly contribute to what Bonilla-Silva refers to as abstract liberalism. Criticisms of the men focused on their agency and ignored what challenges their race and class may have presented in properly navigating the judicial system. In applying the law, this type of color blindness (e.g. fairly applying the law across all defendants is not equality) assumes that all men have access to learn about legal services in highly segregated areas like Detroit and Houston where education is lagging, poverty, unemployment, and crime are high, and resources such as public transportation are inefficient. Race is ingrained in our nation's history and thus it is not uncommon for legislatures to create laws that disproportionately affect particular groups of people. This disproportionate affect however is an acceptable policy amongst legal bodies so long as the effect is not created intentionally. Beller, and Graham (1991) suggest that because child support laws were more successful among African Americans that laws were purposefully targeted to that community. The author found this successful because African Americans were less likely to pay before they were targeted. This is problematic not only because laws targeting one group is discriminatory, but also had discriminatory effects. When men are required to pay formal child support, as discovered in the case studies, child support becomes a priority particularly when the threat of incarceration for failure to pay child support looms over their heads. Child support is paid before anything else and thus these men struggle in paying other essential bills. When fathers are able to pay in kind as found this gives fathers the ability to directly provide the child with what s/he needs without

sacrificing other necessities. Essentially the mother and the child benefit while the father remains in poverty. Thus successful in the eyes of Beller and Graham (1991) is perhaps false success of the child support system when fathers are paying child support for the fear of being arrested and foregoing other needs.

## CONCLUSION

The research presented here documents how six African American men in highly segregated urban areas experienced difficulties and injustice within our judicial system. Fathers are over-burdened with responsibility while the socio-legal structure lacks the depth and breadth to properly deal with these situations. The cases used in this case study are distinct from other cases of paternity “fraud” where the default dad is the husband or ex-husband of the mother because of the martial presumption of paternity. Many U.S. states have a long history of establishing husbands or husbands within 300 days of the divorce as the legal father of a child unless sterile. While there are certainly issues with this law, it is more “acceptable” to assume a husband or a recently ex-husband to be the father of his (ex) wife’s child. The laws implemented in Michigan and Texas are insensitive to, and incognizant of the surrounding circumstances plaguing men of urban areas. And at a national level African American men are incarcerated at a higher rate than any other nationality.

While these laws were not intentionally designed as such, they reflect a racist system because of lack of consideration of culture difference. Based on white privilege child support laws started out as guides for the courts for divorced fathers. These divorced fathers were white. From a public policy standpoint we want to establish as many paternities as possible so someone is financially responsible. This creates problems for fathers with limited mobility. Most people understand justice as if you are not the biological dad then there is nothing to worry about but there is much more to fatherhood than meets the eye at first glance. Men are jailed for child support when they are biologically related to the child as well as when they are not. Poor fathers lack the resources to navigate a system that is systematically set up to abet failure. While the literature does discuss fathers who are unable to pay child support there is little research



regarding fathers who are jailed for child support when they are not the father of the child. For the purposes of this paper I referred to these men as childless fathers. Without the help of legal counsel it is almost certain that fathers in danger of receiving prison time for failure to pay child support will have difficulty explaining to a judge why they should not be held accountable for a child support order they were wrongfully given. African American fathers are more susceptible to facing these challenges in the court and thus the judicial system acts as a structure of oppression.

All of these men expressed the same challenges: confusion in navigating the system, financial restraints in attaining an attorney (except for H and W), danger of losing home and job, inability to pay bills and fear of returning to jail. These men did not know the socio-legal system so they avoided it and caused greater problems for themselves. Some of the things fathers mention as barriers are reported from the University of Wisconsin-Madison Institute for Research on poverty as well as other studies (Swisher and Waller 2008). These fathers know little about the process and the system and are taking advantage of Becerra, Rosina M., Ward Thomas, and Paul M. Ong (2001). In the child support enforcement context, “latent racism is manifested in the taken-for-granted quality of judges’ and family court commissioners’ statements about known job openings and the presumed ease with which they assume that the poor, Black fathers who appear in their courts can secure those jobs this can also be applied to ability to navigate the system and access to knowledge” Brito, Tonya L., David J. Pate Jr, and Jia-Hui Stafanie Wong. (2014). Overclusive<sup>14</sup> Black's Law Dictionary (10th ed. 2014) laws such as the ones discussed harm African American men, by targeting the entire population.

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<sup>14</sup> Overinclusive is a legal term of art. Defined as (Of legislation) extending beyond the class of persons intended to be protected or regulated; burdening more persons than necessary to cure the problem <an overinclusive classification>. Black's Law Dictionary (10th ed. 2014)

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