Hollywood's White Legal Heroes and the Legacy of Slave Codes

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AFTERIMAGES OF SLAVERY

Essays on Appearances in Recent American Films, Literature, Television and Other Media

Edited by Marlene D. Allen and Seretha D. Williams
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KATIE ROSE GUEST PRYAL

With the election of an African American to the office of President and the nomination of African Americans to the offices of Secretary of State, Surgeon General, Supreme Court Justice, and other high ranking positions in U.S. government, it is easy to argue that our society has overcome the legacy of slavery. But many of the laws that these politicians swear to uphold were first created under slavery and were intended to maintain it. As our society strives to correct the wrongs of slavery, we simply remodel formerly unjust laws. Slavery thus echoes throughout our modern-day legal system.

Our laws now say that a white person can no longer kill a black person with near-impunity, as could be done under slavery. They say a black person can no longer be executed merely for threatening a white person, as could be done under slavery. Criminal codes are now supposed to apply equally no matter the race of the perpetrator of a crime or the race of the victim. But our criminal justice system remains flawed. These flaws reveal themselves most starkly when studied on a grand scale. In the U.S., 41 percent of death row inmates are black.¹ One in nine black men between the ages of 20 and 34 is in prison.² Since 1976, only 15 white people have been executed for murdering black victims, a stark contrast to the 242 black people who have been executed for murdering whites.³

This imbalance in punishment can be at least partially attributed to the legacy of slave codes and racist systems of punishment in force after the end of slavery. Although criminal codes have been rewritten to appear race-neutral, statistics reveal that neutrality in practice has yet to arrive. Rather, the legacy of slavery haunts the daily work of our justice system. Although most Americans do not have much interaction with our justice system, this haunting nevertheless enters our popular consciousness because American popular culture is fascinated by law and courtroom drama is a major genre of American
cinema. This chapter explores the portrayal of black defendants and white lawyers in mainstream courtroom dramas and draws connections between these portrayals, the legacy of slave codes, and the Supreme Court’s rejection of statistical and historical proof of racism in the application of the death penalty.

Many scholars have observed how law has influenced cinema and how cinema has influenced law. In his study of the film *Judgment at Nuremberg* (1961), film scholar Martin Blumenthal-Barby asks, “What can a fictional film *add* to the bare documentation of an actual trial?” He suggests that the film “sheds light on the enormous challenge presented by the ethical values that the [cinematic] trial considered, a challenge that ... was also characteristic of the historical trials ... on which the film dwells.” In other words, because the cinematic trial wrestled with complex ethical issues, we are able to see more clearly how the real trial faced these same issues and understand these issues in a new way. For Barby, the film expands our understanding of the trial. Legal scholars Mezey and Niles suggest in their Marxist reading of law in popular media that “[i]n billions more people watch trials or oral arguments” on television and film “than will ever visit a real court.” Thus, for Mezey and Niles, cinematic portrayals of our legal system are “the dominant images of the law and its institutions that many Americans ... will experience.” I suggest that as law becomes more accessible to the average American in its cinematic representation than it does in its reality, the representations gain real legal power. For example, every time a young lawyer watches a cinematic lawyer and thinks, *I want to emulate him*, the cinematic lawyer molds the actual lawyer.

In this chapter, I focus on a subgenre of legal cinema, what I call the “White Legal Hero” genre. The typical white legal hero film tells the story of an innocent or otherwise righteous black male defendant facing a capital charge. He is represented by a white male “hero” lawyer who tries to overcome the racist justice system. Although these films are often popular with audiences, they share three troubling traits. First, the racism and racial violence portrayed in the films are blatant and egregious, far different from the “microaggressions” and institutional racism that haunt our criminal justice system. In the face of exaggerated film portrayals, these institutional manifestations of racism fade into meaninglessness. Second, the films portray white legal heroes as ordinary men working to eradicate this egregious racism using law, one case at a time. This model suggests that we can count on legal heroes to ensure that our legal system remains just. The failure of this model lies in the disconnect between, on the one hand, the macroscopic findings of social scientists, and, on the other hand, the moralized film narratives about individual lawyers. In reality, studies show that racial disparities are prevalent
throughout the legal system, from arrest through conviction and punishment, and eradicating these disparities will require deep, institutional changes, not only the work of a few hero lawyers (although their labor is also important).

Third and finally, the innocence, or righteousness, of the black defendants of white legal hero film narratives creates a victim of the law that audiences feel sympathy for. The innocence of these characters disguises the real problem: statistics prove that we apply our death penalty in a racially disparate manner. The defendants in these statistics are often not innocent — they are, often, guilty of murder. However, valorizing lawyers who fight only for the innocent — as these film narratives do — diminishes the work of lawyers who fight to preserve the constitutional rights of all who are charged with crimes, even the guilty. In fact, such lawyers are sometimes demonized for defending men with whom white, middle-class Americans would rarely sympathize.

I argue here that white legal hero films arise from the desire of American liberals to see today’s manifestations of racism as manageable and tolerable and to ignore the legacy of slavery in our legal system. In turn, the films’ depiction of overwhelming racial violence numbs audiences to the institutional racism of the American criminal justice system, making this racism easier to ignore. I ground this argument in a consideration of the criminal laws of slavery and how these laws continue to exert influence in today’s justice system. Accordingly, in the first part of this chapter, I examine the U.S. Supreme Court opinion McCleskey v. Kemp (1987), which upheld capital punishment despite proof of racial disparities in capital sentencing. I show how McCleskey reiterates the unjust criminal codes of slavery in the form of institutional racism. The second part of this article provides a reading of two white legal hero films that arose in the shadow of McCleskey: A Time to Kill (1996) and Amistad (1997). This reading reveals how white legal hero films diminish the statistical proof of racism that came to light in the McCleskey opinion, creating a context in which the opinion, despite major logical and moral flaws, seems acceptable. Although institutional racism is unlikely to become a common subject of Hollywood cinema (and studios do not have an enforceable duty to address it), white legal hero films will probably continue to be popular. We must rely on critiques such as this one to bring focus back to the actuality of racism in our criminal justice system.

Reiteration of Slave Codes in McClesky v. Kemp

In order to understand the sociolegal context in which white legal hero films arise, one must first examine the laws of the death penalty in the United States and their relationship to race. In McCleskey v. Kemp (1987), the U.S.
Supreme Court ruled that, despite statistical proof of racial bias in the application of capital punishment, the death penalty does not violate the Constitution. The case reached the Supreme Court on a writ of habeas corpus filed by Warren McCleskey, a black man convicted in Georgia of murdering a white man and sentenced to death. Justice Powell, writing for the majority, framed the issue before the court as "whether a complex statistical study that indicates a risk that racial considerations enter into capital sentencing determinations proves that petitioner McCleskey's capital sentence is unconstitutional under the Eighth or Fourteenth Amendment." McCleskey's attorney argued that because "evidence demonstrates that Georgia sentences the killers of its white citizens at a rate nearly eleven times that to which it sentences to death the killers of its black citizens," the capital punishment statute of Georgia is unconstitutional. In a 5–4 decision, the Supreme Court rejected McCleskey's argument, holding that McCleskey failed to prove the essential element of a discrimination claim: the existence of "purposeful discrimination" in his "particular case.

The Court's ruling effectively excluded statistical evidence of discrimination from judicial consideration in all discrimination suits. Although the court accepted as true the study's findings, Justice Powell argued that "statistics at most may show only a likelihood that a particular factor [e.g., racism] entered into some decision," rather than providing enough proof of that factor (racism) to satisfy the Court. Given the data, the risk that "racial prejudice might 'influence[e] a jury's decision' is not so high as to be "constitutionally unacceptable." Unfortunately, this exclusion of statistical evidence from race discrimination lawsuits ignores how racism often manifests in the contemporary American legal system. As Henry Louis Gates writes about the McCleskey opinion, "Probability functions in the place of ignorance. It is because the infinitude of 'microaggressions' ... constitutive of racism defy positivist verification that statistical regularities become important." In other words, racism can be hard to spot in individual cases; given the insidiousness of institutional racism, we must rely on statistical evidence to guide us.

Statistical evidence shows that race, particularly the race of a murder victim, plays a dominant role in capital sentencing decisions. In his petition, McCleskey relied upon what has come to be known as the "Baldus Study," a statistical examination of the death penalty in Georgia that revealed a disparity "in the imposition of the death sentence based on the race of the murder victim, and to a lesser extent, the race of the defendant." The Supreme Court accepted the findings of the Baldus study as true and provided a summary of the study's findings in their opinion. The Court acknowledged that the study accurately found that "defendants charged with killing white persons received the death penalty in 11% of the cases, but defendants charged with killing
blacks received the death penalty in only 1% of the cases." The study closely examines rates of capital sentencing based on a combination of the race of the defendant and the race of the victim. The study "found that the death penalty was assessed in 22% of the cases involving black defendants and white victims ... and 3% of the cases involving white defendants and black victims. Similarly, Baldus found that prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims ... and 19% of the cases involving white defendants and black victims." Despite the strength of this statistical evidence, the Court held against McCleskey because he could not prove that racism occurred in his particular case.

Disparities in capital sentencing based on the race of the perpetrator and the victim have a long history in the U.S., reaching back to the slave codes of the South. The slave codes of Virginia provide a vivid precursor to the racial discrepancies in punishment found by the Baldus Study. In 1723, Chapter Four of the laws of Virginia provided that if any slaves "shall at any time hereafter ... plot or conspire the murder of any [white] person or persons whatsoever ... the slave or slaves convicted thereof ... shall suffer death." Thus, for a slave in Virginia, merely planning to murder a white person was a capital crime. The law also provided that if a slave was killed accidentally while being punished, "no person concerned in such dismembering, correction, or accidental homicide, shall undergo any prosecution or punishment for the same." So, if a white person castrated, beat, or accidentally killed a slave, that person was exempt from punishment. Furthermore, the law provided that "neither shall any person whatsoever, who shall be indicted for the murder of any slave, and upon trial, shall be found guilty only of manslaughter, incur any forfeiture or punishment for such offence or misfortune." Under this law, if a person was found guilty of manslaughter for killing a slave, then that person was exempt from all punishment under the law.

Laws exempting whites from punishment for the killing of blacks created powerful customs that are still with us today. The Baldus study documented the effects of these customs on our justice system. Yet the Supreme Court in McCleskey rejected both statistical and historical evidence of discrimination. McCleskey argued that the Baldus study revealed discriminatory purpose on the part of the prosecution and jurors in his case. The Court rejected these arguments, reasoning that although the death penalty may be applied in a racially discriminatory manner in general, McCleskey failed to prove intentional or purposeful discrimination on the part of the participants in his particular trial: "McCleskey must prove that the decision-makers in his case acted with discriminatory purpose. He offers no evidence specific to his own case that would support an inference that racial considerations played a part in his sentence. Instead, he relies solely on the Baldus study." The Court thus
demanded "evidence specific to [McCleskey's] case," rejecting evidence of systemic racism and the inference that this systemic racism influenced McCleskey's case.

McCleskey then suggested that the statistical studies showed discriminatory purpose on the part of the State of Georgia, because "the State has violated the Equal Protection Clause by adopting the capital punishment statute and allowing it to remain in force despite its allegedly discriminatory application."24 The Court responded to this argument by redefining the meaning of "purpose" to exclude any state of mind except bald premeditation: "discriminatory purpose ... implies that the decision-maker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group."25 In this passage, the Supreme Court draws a distinction between awareness of consequences—knowledge that the death penalty is applied in a racially disparate manner—and intention to apply it in a racially disparate manner. The Court thus demanded that McCleskey prove that the state legislature enacted the death penalty because of its racially disparate impact, not in spite of it. The Court uses this distinction to support its conclusion that Georgia did not act with discriminatory purpose. However, the distinction is not as clear as the Court presumes. The Court reasons that knowledge of a wrong is inadequate to create responsibility for that wrong. In other areas of our criminal justice system, mere knowledge of the risk (or certainty) of harm is adequate to create culpability. The level of culpability may be lesser than when the harm is intentional; nevertheless, knowledge on the part of a perpetrator is adequate to prove guilt.

In addition to the statistical proof provided by the Baldus study, the Court also rejects any arguments based in history. In footnote twenty to the opinion, the Court rejects "historical evidence" of discrimination on the part of the state.26 In his brief and arguments, McCleskey provided evidence of purposeful discrimination in the criminal code of Georgia both before and after the Civil War. Although these historical codes are the antecedents of the criminal statutes McCleskey challenges in his case, the Court roundly dismissed such evidence: "Although the history of racial discrimination in this country is undeniable, we cannot accept official action taken long ago as evidence of current intent."27 Thus, the court dismisses both statistical and historical evidence in favor of a nearly impossible requirement to show purposeful and individualized race discrimination on the part of jurors, prosecutors, and legislators in a single criminal case.

Hollywood seems to have taken the McCleskey ruling to heart. The McCleskey Court redefined racial discrimination in such a way as to exclude the statistical discrimination revealed by the Baldus study in favor of outward
and individualized discrimination by particular "bad guys." In white legal hero films, the racism of the bad guys is so blatant that there can be no doubt of "purposeful discrimination." In this way, white legal hero films demonstrate the same sort of historical and cultural ignorance as the McCleskey opinion, along with an investment in an easily discernible (and filmable) causation of harm. The Supreme Court, and the films that mimic its arguments, ignore institutional racism in favor of depictions of exaggerated, racist bad guys. This exaggeration, rather than highlighting the reality of racism, elides from popular consciousness the institutional racism of the criminal justice system. Thus, in addition to exposing the weaknesses of white legal hero narratives, this critique raises questions about their legal mythos and the real-world risks they pose to the eradication of the legacy of slavery from our justice system.

A Time to Kill, Amistad,
and the White Legal Hero Genre

In order to demonstrate how white legal hero films elide institutional racism from our popular consciousness, I offer a study of two films that exemplify the genre: A Time to Kill (1996) and Amistad (1997). These films, like all white legal hero narratives, portray the trials of black defendants for capital crimes, defendants who are either justified or wrongly accused. The black defendants are represented by white male lawyers who are the charismatic, reluctant heroes of the films. Although the films purport to focus on racism and its eradication, they do little true liberatory or progressive work. The films reinforce the fact that heroes tend to be white and male; they do not question the racist environment in which the legal dramas play out; they do not confront the inequities of the legal system, instead relying upon the white legal hero to work against the racist legal system in order to win.28 I will ground my examination of these films in the central conflict of McCleskey: between statistical proof of institutional racism prevalent in our criminal justice system and the judicial demand for a showing of egregious, individualized "bad guys." Both films that I study here, along with other films of this genre, argue that today's manifestations of racism are tolerable (just as the Supreme Court found the statistics of the Baldus study tolerable). Meanwhile, the films' depiction of racial violence perpetrated by cartoonish bad guys numbs audiences to the institutional racism of the American criminal justice system, making this racism easier to ignore (as the Supreme Court ignores institutional racism in McCleskey).

Although A Time to Kill and Amistad might appear to be very different
films, they share the major characteristics of the white legal hero genre: a righteous black male defendant on trial for his life because he is accused of committing a capital offense; a reluctant white legal hero lawyer who is the real hero of the film; representations of racism that are graphic and egregious; and cartoonish, racist “bad guys.” The films portray different time periods (the 1840s and the 1980s), yet their similarities as representations of the white legal hero genre place them both firmly in the late twentieth and early twenty-first century, as the character of the white legal hero battling racism arguably first arose in response to the Civil Rights Movement of the 1950s and 1960s (in the form of Atticus Finch). The legal issues that the films address are different, but the impacts on American popular impressions of racism are nearly identical, as I demonstrate below.

In *A Time to Kill* (*Time*), the white hero lawyer is Jake Brigance (played by Matthew McConaughey). Brigance has an unsuccessful law practice in the small town of Canton, Mississippi. He is a native of the state, is married to a gorgeous blond wife, and has a beautiful young blond daughter; the Brigance family lives in a rambling old bungalow that they are restoring themselves. The black defendant, Carl Lee Hailey (played by Samuel L. Jackson), works in a saw mill in town and lives in the poverty-stricken black side of town. He is married with four children, including a beautiful young daughter named Tonya. At the opening of the film, Tonya is brutally raped and beaten by two lower-class white men. The rapists are arrested, but before their trial, Hailey shoots and kills them. He is charged with murder, and Brigance agrees to defend him. At trial, Hailey pleads temporary insanity and Brigance must prove that Hailey was not aware of his actions at the time he shot the murder victims.29 During his closing statement, after a detailed description of Tonya’s attack (which makes many jurors cringe), Brigance manages to convince the jurors to “imagine [Tonya is] white.” Based on this pathos-driven argument, which requires that they finally view the defendant as a (white) person, the all-white jury acquits Hailey. Throughout the film, Hailey is portrayed as justified for defending his family and Brigance as a hero for defending him.

In *Amistad*, set in 1840s New England, Matthew McConaughey reprises his white legal hero role to play a lawyer named Roger Baldwin. Baldwin represents a group Africans who took over the Amistad slave ship, killing most of the white crew. The film is based on a true story and real Supreme Court opinion, *United States v. The Schooner Amistad* (1841). In the film and the real-life trial, the entire group of slaves are the defendants, led by a man named Cinque (played by Djimon Hounsou). In the opening sequence of the film, Cinque prises free the nail that holds his chains and leads the Amistad mutiny. He is the one who interacts with Baldwin, at first through a Mende translator, and eventually through the English that he learns. The trial is not a murder
trial per se; rather, the court must decide whether the mutineers were recently brought from Africa in violation of the recent ban on the transatlantic slave trade. If Baldwin can prove that the defendants were brought from Africa, and not Cuba as their captors claim, then the mutineers are free and can return home. If not, then they could be subject to execution for murdering their white captors. The lives of the defendants hang upon this consideration: If the mutineers are already enslaved Africans of the Americas, then they are subject to the laws that bind slaves and could be put to death. If they are non-slave Africans of Africa, they are not subject to the same laws. In short, free Africans of Africa can kill whites in self-defense (as all whites are allowed to do), but enslaved Africans of America cannot. At trial and on appeal, the defendants prove they are free Africans. In the end, they are able to gain passage back to Africa. The film portrays Cinque as justified for leading the mutiny and killing the cruel slave traders and Baldwin as a hero for agreeing to represent the mutineers.

**Exaggerated Cinematic Racism**

The exaggerated racism of these two films numbs audiences to the reality of institutional racism. The portrayals of racism in *Time* and *Amistad* create an environment in which a decision such as McCleskey can appear right and reasonable. After all, the statistics of the Baldu study — the numeric demonstrations of institutional racism — lack the color and life of the racist rapists in *Time* and the vicious slave traders in *Amistad*. The horrific racial violence of the films renders the defendants righteous and justified in their actions and sympathetic in the eyes of audiences.

*Time* starkly portrays the racist environment of Canton. Brigance says he has taken Carl Lee’s case to prove that a black man can have a fair trial in the South, a South Jake dearly loves. Yet evidence of open and severe racism is all around. The film opens in the black neighborhood of Canton with its dirt roads and ramshackle homes, creating a sense of normalcy about racial segregation of housing and the impoverishment of black people. The audience travels along the dirt streets observing the destruction created by two white men racing in their old yellow pickup truck. They terrorize the inhabitants, eventually picking as their particular victim the fragile-looking ten-year-old Tonya Hailey. They rape and try to murder her and she just barely survives the attack. The men who attack Tonya are hairy, dirty, half-clothed, with distended beer guts hanging from beneath their cut-off t-shirts. A friend of Brigance refers to the men as “hyenas” (providing a stark contrast between the rapists and the handsome, clean-cut Jake Brigance). The rapists are arrested
by the black sheriff and two white deputies who have physical evidence—the police find Tonya’s bloody sneaker in the back of their truck. Eventually, one of the rapists confesses to the crime.

The bad guys continue to proliferate in the film even after Tonya’s father shoots the rapists in the courthouse. After Hailey’s murder trial begins, the Ku Klux Klan harasses Brigance, hoping he will drop the case. Eventually, they burn down his bungalow and kidnap his legal assistant (played by Sandra Bullock). The prosecutor, Rufus Buckley (played by Kevin Spacey), is an ambitious, racist cheat who declares he will “fry that nigger” and then rigs the jury. Shortly before the trial, Brigance explains to Hailey how dangerous Buckley is and the risks of the jury selection process:

Carl Lee: What’s going to happen to me now?
Jake: There’s going to be a preliminary hearing, probably tomorrow. After that Buckley’ll push for a fast trial.
Carl Lee: Who’s Buckley?
Jake: Rufus Buckley, District Attorney. He’s mean, he’s ambitious and he’s going to eat this up because of the publicity.
Carl Lee: But you done beat him, ain’t you?
Jake: Yeah, but not in a murder case.
Carl Lee: [Pause] Think I can win?
Jake: It all depends on the jury, Carl Lee. Pick the right jury, and you walk. D.A. picks the jury, and you get the gas.

In fact, Buckley illegally gets his hands on personal information about the jurors before the trial and uses this information to pick an all-white jury sympathetic to his mission. Given this violently and openly racist environment, one wonders how Brigance and Hailey can ever win.

The spectacle of racism on the screen—the bombs, kidnapping, Klansmen in their cloaks—creates a dystopic world, an alternate universe in which the historical trappings of racial violence from earlier parts of this century are flung forward to the mid-1990s. Buckley’s jury tampering is exactly the sort of “discriminatory purpose” that the Supreme Court demands proof of in McCleskey. If this is the proof of racism our justice system demands, then statistics such as those provided in the Baldus study will remain legally unconvincing. Amistad creates a similar problem in its vivid depiction of slave trading and a slave trial. Although it purports to show real-life events and the heroism of the Amistad mutineers, the film has the same negative consequences of all white legal hero films: audience numbness in the face of violent racism and misplaced faith that white heroes can keep our legal system just.

Amistad depicts in vivid detail the great violence of the Middle Passage as Cinque recounts for Baldwin his story from capture to his arrival in Connecticut. The scenes of the ocean crossing are particularly horrifying. The captured Africans are crammed into the hull, piled close together, nude. A
woman gives birth, then dies shortly after. Another woman cares for the baby while Cinque drops the mother’s body in the ocean. While Cinque and other Africans watch, two men are later whipped to death in punishment. As the blood flies and the Africans get a sense of what the future holds, the woman with the newborn baby sits on the ship’s railing, and then allows herself and the infant to fall into the ocean and drown. Later, the slave traders only feed every second or third African, and it seems they are running out of supplies. In the harsh light of day, the traders throw a bag of heavy rocks overboard. Attached to the bag is a chain tied around the waists of a dozen of the Africans. They scream as they are dragged from the ship deck into the sea to their deaths.

Even after the horrors of the Middle Passage are over, the Amistad mutineers encounter racial violence, from the white soldiers that capture them and take them to Connecticut to claim them as salvage, to the racist judge that presides over one of the trials. The filmmakers, then, set up the slave traders, soldiers, and the judge as the exaggerated, racist bad guys that the righteous black defendants and white hero lawyer must fight. The racism and racial violence of the early 1800s in the United States is nearly unspeakable, and we will never know how many Africans died on the Middle Passage or just how cruelly slaves were treated. In this way, the film tells an important story of our history. But audiences are able to look at the screen and point to the bad old days, back when slavery and racial violence flourished. The racism that pervades our society today is muted in the face of the horror on the screen.

The legal issues of the Amistad case are complex: at issue in the case, really, is whether a person of African descent has the right to kill in self-defense. If the judges deemed the Africans to be recent victims of an illegal slave trade, then they do possess the right. If the judges deemed the Africans to be slaves, then they do not possess that right. The laws forbidding black slaves in the Americas from killing whites, even in self-defense, echo through the late twentieth and early twenty-first centuries in the statistics of the Baldus study. The Baldus study reveals, at its core, that a black person killing a white person seems like a greater moral wrong to juries that a white person killing a black person.

In both films, historical racial violence comes to life on screen. These histories are indeed worth deep study and attention. I suggest, however, that problems arise when our focus—cinematic or otherwise—remains on the historical violence, in its outward and blatant manifestations, while we ignore the more subtle variations that are far more pervasive today. Justice Brennan, in his dissent in the McCleskey opinion, pinpoints this very issue. He accuses the majority of deliberately ignoring history’s connection to the subtle ways
that contemporary racism manifests. He writes, "Warren McCleskey's evidence confronts us with the subtle and persistent influence of the past. His message is a disturbing one to a society that has formally repudiated racism."31 Here, Brennan points to the historical ties between the Baldus study findings and the racism that weaves through American culture. Although our nation has official declared an end of racism, the Baldus study confirms that official declarations cannot instantly change institutions such as our criminal justice system. For change to occur, we must first discover systemic failures using statistical studies and shift our focus from the gripping stories that make the news and the plots of Hollywood movies and instead focus on correcting these systemic wrongs.

Reinforcing the Status Quo

Part of what makes white legal hero films so problematic is their claim to be liberatory, on the one hand, while reinforcing contemporary racist stereotypes on the other. Historian Eric Foner writes of Amistad, "Despite the filmmakers' orgy of self-congratulation for rescuing black heroes from oblivion, the main characters of Amistad are white, not black."32 Worse, Foner observes, "Amistad's black characters are essentially foils for white self-discovery and moral growth." Film critic Roger Ebert makes a similar observation about Time, writing that the film has "trouble imagining its black characters. The subplots involve mostly Brigance's white friends and associates."33 This is a primary problem of the white legal hero genre — although the films claim to confront racism, they simply reinforce the presumption that a movie star hero is a white man. Furthermore, although they vividly portray racist "bad guys," white legal hero films never challenge the racism that underpins the communities in which the trials arise. On the contrary, the films reaffirm it by portraying institutional racism — such as the poverty of the black community of Canton — as normal.

A remarkable scene that reinforces institutional racism occurs in Time, when the white rapists are brought to jail by the black sheriff. All of the other cells hold groups of black men watching the two white men being led in. The sheriff places the white men in an empty cell. He then warns the white men to behave, otherwise, he says in a threatening tone, "I'm gonna integrate this jail." When I watched this film in theaters, the sheriff's comment elicited cheers from audiences.34 However, closer examination reveals how very little this scene does to question racism in the criminal justice system. Audiences do not ask why the dozens of other prisoners are black, but rather accept this disproportionate representation of black men as criminals. One might believe
this scene is merely another depiction of stark racism in *Time*, but this assessment does not hold. With one exception, the law men of Canton are good guys—the black Sheriff and the white deputy who testifies on behalf of Carl Lee at trial. Given these good and morally correct law enforcers, the men in the jail are, by implication, actual criminals. This scene thus reinforces the reality of the institutional racism that criminalizes black men at the same time rendering such racism normal and acceptable.

In *Time*, the geography of the community itself reinforces institutional racism that keeps a disproportionate number of black people in poverty. Hailey’s poverty and that of the rest of the black folks of Canton contrasts starkly against the wealth of the white lawyers who help him. With the scenes depicting the poor black part of town, the film only reiterates the connection between blackness and poverty. In one scene, the film compares Hailey’s financial situation with Brigance’s in order to emphasize the differences between the two men. After the preliminary hearing, Jake and Carl Lee meet in the jail cell. They stand next to one another near the bars. Jake counts money, Carl Lee’s first payment to him, and appears displeased. Carl Lee holds his head in his hands, his body language expressing desperation. Their exchange is full of frustrated tones:

Jake: It’s nine hundred dollars, Carl Lee. We said a thousand, down.
Carl Lee: My kids gotta eat.
Jake: Mine too.

Here is the first of two parallel moments in this scene. Carl Lee has paid nearly a thousand dollars to Jake, keeping one hundred back in order to feed his wife and four children. The audience is aware of Jake’s financial needs; earlier in the film we learned his bills are behind at his office. Yet it seems difficult to believe that Jake’s middle-class family will literally go hungry. In the jail cell, Jake steps back from Carl Lee and gives an accusatory look while Carl Lee makes excuses:

Carl Lee: Them folks over at the bank, they won’t loan me no money on my house.
Jake: Why not? Your house is almost paid for. You borrowed on it before for Lester’s [Carl Lee’s brother] trial.
Carl Lee: They said I wasn’t in jail before. Said to Gwen [Carl Lee’s wife], how am I goin’ to pay sittin’ on death row? And I lost my job at the mill.
They called Gwen. Worked twenty years, I’m out five days and they fire me.
Jake: Carl Lee, I can’t try a capital murder case for 900 dollars... I need to live.
Carl Lee: Me too, Jake. I need to live, too.

This is the second parallel moment, emphasizing both the similarities and differences between the characters. Despite Carl Lee’s list of woes, Jake empha-
sizes that he needs more money. Carl Lee's comeback, emphasizing how the word "live" has a more literal meaning in his situation, ends the conversation. In this scene, the two men seem to spar as equals, but this is merely an illusion. Jake looks at Carl Lee as a recalcitrant delinquent who does not keep his end of a contract. Jake cannot wrap his mind around the notion that Carl Lee is utterly without options, that Carl Lee's suffering is not parallel to Jake's at all. Carl Lee does not have wealthy in-laws as Jake does, where his family can go live when Canton becomes too dangerous for them. Carl Lee, like every other black person in the film except for the Sheriff, is physically, legally, and financially powerless, and the film does little to ask why. We cannot blame the two young rapists or even the district attorney for the impoverishment of the entire black community of Canton. The problems are more pervasive than could be caused by the bad deeds of a few bad guys. The problems are systemic.

In Amistad, neither the film nor its characters seriously question the validity of slavery in the U.S. There are abolitionists in the storyline, but the legal issues of the trial never approach the legitimacy of slavery itself. Eric Foner criticizes the way the filmmakers mislead the audience about the historical significance of the Amistad case for the abolitionist movement. Foner writes, "[T]he Amistad case revolved around the Atlantic slave trade — by 1840 outlawed by international treaty — and had nothing whatever to do with slavery as a domestic institution. Incongruous as it may seem, it was perfectly possible in the nineteenth century to condemn the importation of slaves from Africa while simultaneously defending slavery and the flourishing slave trade within the United States." In Amistad, the institution of slavery itself is reaffirmed throughout the film not only by the characters, but also on a metadiscursive level by the film itself.

For example, proslavery advocates of the day often claimed that Africans deserved to be enslaved because they were less-than-human, little more than animals. Amistad supports this claim because it depicts the mutineers, particularly Cinque, as animalistic and even monstrous. In the opening scene of the mutiny, the camera takes the point of view of the white sailors before Cinque attacks. He strides across the deck with a weapon in hand, backlit by the starlight, his tall, muscular, nearly-nude body draped in menacing shadow before he strikes one sailor to death. The actor Hounsou pitches his normally soft voice deep in his chest and adds a barking gruffness to his tone, rendering his words not only incomprehensible (as they are in a foreign tongue) but also tonally subhuman, full of growls and snarls. The film is thus, in part, the story of Cinque's transformation from an animalistic, barely-clothed African to a Europeanized gentleman who learns English and dresses in a tailcoat. Amistad shows little knowledge or respect for the Africans as Africans, only
embracing them once they embrace Euro-American culture. The implicit claim of the film, then, is that by embracing this new (and superior) culture, Cinque proves that he should not be enslaved.

Another scene reinforces the notion of the Africans as wild, animalistic, and dangerous. One meeting between Baldwin and Cinque devolves into incomprehension while the lawyer tries to explain legal procedure to his client. In this scene, Baldwin visits Cinque in his cell with James, a Mende translator. The setting is very dark. The cell is large, holding all of the mutineers together. They have lit a fire in the center of the room and some of the mutineers play drums. Baldwin, Cinque, and James sit off to the side, and Baldwin tries to explain the appeals system to Cinque, who does not understand why, if they have already won their trial, he has not been set free.

Baldwin: Our President has appealed the decision to the Supreme Court.
Cinque [through James as translator]: What does that mean?
Baldwin: We have to try the case again.

The conversation rapidly deteriorates as Cinque gets angry. The conversation centers around what exactly Baldwin told Cinque before the trial regarding the American judicial process. The two men interrupt each other while James tries to keep up the translation; the drumming and singing in the background add chaotic noise.

Baldwin: No, what I said was—
Cinque: No, you said—
Baldwin: What I should have said—
Translator [to Baldwin]: I can't translate “should.” You either do something or you don't do it.
Baldwin: Understand what I am saying ... What I said to you before the judgment is almost how it works here. Almost, but not always. And that's what's happened.
Cinque: What kind of place is this? Where laws almost work?

At this point Cinque storms from Baldwin and strips off his clothes by the bonfire in anger. He is lit from behind, so the audience can only barely make out his naked body. He is screaming, talking, yelling, and talking, as he approaches Baldwin. No subtitles are given here and James does not translate. Like Baldwin, the audience cannot understand Cinque, even when Cinque is close to Baldwin's face. Baldwin looks shocked and frightened. Cinque walks back toward the fire. We see Cinque in profile, lit from behind by the bonfire, and can no longer make out the details of his face. Baldwin, in turn, seems justified in his fear of and aggravation with his disruptive client. Indeed, his taking on of the case seems nothing short of a heroic self-sacrifice—as the filmmakers no doubt intended.

This scene in the jail cell, in a moment of dramatic irony, attempts to
show Cinque as powerful but ends up portraying, instead, the nightmare stereotype held by many white people of Cinque’s day and of our own—that of the savage African. The film makes Cinque both savage and at the same time childish, because he is unable to speak comprehensibly. Thus, the film implicitly provides evidence to support the many justifications of chattel slavery in the mid-1800s. For example, in his 1854 tract justifying slavery, American social theorist George Fitzhugh writes of Africans: “He is but a grown up child, and must be governed as a child.”36 In Fitzhugh’s imagining, the slaveholder is the parent in this relationship. Furthermore, were a slave to live in Africa again, the consequences would be dire: “In Africa or the West Indies, he would become idolatrous, savage and cannibal.”37 As Cinque transforms into a Europeanized gentleman, visiting with high-level government officials dressed in formal Euro-American clothing, Cinque proves that he is not a “grown up child,” but rather a man who should not be enslaved. Ironically, in this way, Amistad proves Fitzhugh’s point about the need for the civilizing nature of slavery. Only by being brought out of Africa could Cinque cease to be animalistic and “savage.”

Thus, although Amistad purports to be liberatory in its telling of a nearly forgotten story of African heroes, the true hero of the film is the white lawyer who takes on the Africans’ case and wins despite great odds, even enlisting the assistance of another white legal hero—John Quincy Adams (played by Anthony Hopkins). Cinque, as I described above, seems either monstrous, childish, or both, until the very end of the film—despite the righteousness of his actions aboard the Amistad. Furthermore, the egregious racial violence of the Middle Passage numbs audiences to contemporary manifestations of racism, allowing them to ignore statistical evidence, for example, in the face of a (supposedly) long-past history.

Conclusion

In my analyses above, I have shown how white legal hero films portray exaggerated racism and righteous black defendants, narrative characteristics that share little with the reality of the criminal justice system today. I have drawn connections between the flaws of our criminal justice system and these white legal hero narratives, showing how an acceptance of the film narrative creates acceptance of our flawed justice system, and vice versa.

As I have shown, both films—A Time to Kill and Amistad—depict the killings committed by the defendants as justified, even honorable. It is easy for audiences to side with the killers, because they are good men. In contrast, the crime committed by real-life defendant Warren McCleskey was not right-
eous or justified. His habeas petition did not belabor his innocence, rather, only that his capital punishment was unjust because it was the product of race discrimination. In the McCleskey opinion, the Supreme Court never hesitates to remind readers that McCleskey was a cop-killing armed robber. They point out that McCleskey “does not deny that he committed a murder in the course of a planned robbery, a crime for which this Court has determined that the death penalty constitutionally may be imposed.” McCleskey, in the end, is not a sympathetic character, and the “bad guy” in his story — institutional racism — is not one easily portrayed on film. But even unsympathetic defendants deserve to receive fair trials, and to know that they are receiving a punishment because of their crime, not because of their race.

CHAPTER NOTES

1. Death Penalty Information Center, “Race of Death Row.”
3. Death Penalty Information Center, “Race of Death Row.”
5. Ibid., 71-72.
7. Ibid., 95.
8. Davis, “Law as Microaggression,” 1565. I do not mean to suggest that blatant racial violence no longer occurs in our criminal justice system, merely that much racism is often harder to spot because of its insidious institutional nature.
12. Ibid., 308.
13. Ibid., 308–9.
14. I acknowledge the irony of Gates’s observation here. In July of 2009, as I finalized this article, Gates was arrested while entering his Cambridge, Massachusetts, home because he was mistaken as a burglar by a white neighbor.
17. McCleskey, 286.
18. Ibid.
19. Ibid., 287.
20. Perea et al., Race and Races, 108. Although the race of the victim is not specifically mentioned in this part of the code, a contextual examination of the law provides for such an assumption. “Insurrection” and “murder” are listed together in the same sentence. The victims of a slave insurrection, and any attendant murders, would have been white. Furthermore, the rules that follow this one specify far lighter punishments for the killing of slaves.
21. Ibid., 110.
22. Ibid.
24. Ibid., 297–98.
25. Ibid., 297.
26. Ibid., 298.
27. Ibid.
28. Readers might recognize these characteristics in an older, famous, and highly praised white legal hero narrative — *To Kill a Mockingbird*. Indeed, I suggest that Atticus Finch (as played by Gregory Peck) is the grandfather of today's white legal heroes. The critical praise showered on Atticus, Peck, Harper Lee's novel, and the film all point to the pervasiveness of this genre in our popular consciousness.
29. Mississippi follows the M'Naghten rule of legal insanity, adopted by most states in the U.S. According to this rule, a defendant is not guilty by reason of insanity (even temporary insanity) if he did not know what he was doing, or he didn't know that his actions were wrong, at the time of the crime.
30. There were other issues that the *Amistad* courts needed to consider, including a salvage claim by the soldiers who eventually found the *Amistad* with the mutineers aboard — these men sought to sell the slaves and collect the bounty therefrom.
31. McCleskey, 344.
32. Foner, “Amistad Case.”
33. Ebert, “A Time To Kill.”
34. In the film, the jail is not officially segregated. Rather, all of the men held in the jail are black — until the two white men are brought in. For their own safety, the sheriff places the white men in a cell by themselves. Curiously, once Carl Lee is brought in, he, too, is put in a cell by himself. Cinematically, this isolation performs two services: (1) it allows Jake and Carl Lee to have private conversations in the jail and (2) it presents Carl Lee as a lone hero, standing alone behind bars — rather than as just one of many (perhaps, presumably guilty) black men in the jail.
35. Foner, “Amistad Case.”
36. Fitzhugh, *Sociology for the South, or the Failure of Free Society*, 83.
37. Ibid., 84.

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