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Race, Charges, and Sentencing

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by

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Introduction

Over the past twenty-five years, there has been a dramatic drop in national violent crime rates.¹ Despite this, political commentary in the past quarter century has had an intense focus on both the prevention and punishment of crime. The intense push for “safer streets” has been, since the end of slavery, a tool of the powerful to crack down on poorer communities of color, while at the same time arguing that the actions of the powerful must be undertaken for the public good. Portrayals of African Americans, specifically African American men, are distorted beyond reason in the news media, popular culture, and even advertising, resulting in a system that aims to oppress those same communities of color. There are so called broken window policies in criminal justice like stop and frisk or mandatory minimums that are staples of a repressive effort designed at disrupting communities and maintaining a de facto separation of life quality. In this study, analysis at a systemic level, above individual cases, is vital. This is because in an individual case, one factor may adjust or change the outcome, but when many cases are examined as a collective, trends can become evident and potentially distorting factors will be already partially controlled. This is not to disqualify individual cases from consideration as data, but to stress the importance of large scale analysis.

There are two types of disparity in analysis of the criminal justice system: warranted and unwarranted. A warranted disparity is one explained by factors other than malicious discrimination or subjugation by race. An unwarranted disparity is one that cannot be explained by the legal aspects of a case, such as previously discussed differences in legal

¹ Gramlich, John. "5 facts about crime in the U.S." Pew Research Center. February 21, 2017. Accessed October 11, 2017. <http://www.pewresearch.org/fact-tank/2017/02/21/5-facts-about-crime-in-the-u-s/>.

record and crime severity.² The optimal outcome of my research will determine if a disparity exists in Salisbury, and if so, what kind of disparity it is considered.

Proponents of overzealous justice policies in the courts and similar policies practiced by police departments sometimes argue that those same policies are for the good of black people. The argument is that black communities are being cleaned up, therefore improving their lives by removing the criminals and drug dealers from the streets. This is a misrepresentation of the argument, because while these policies do result in a greater number of criminals being locked up, they fail to consider unjust laws or inherently racially discriminatory policies whose explicit purpose was to get, as John Erlichman of the Nixon White House said: “the public to associate the hippies with marijuana and blacks with heroin. And then criminalizing both heavily, we could disrupt those communities.”³ He even went further to admit that the propaganda pushed about the intoxicants they were fighting against were blatant falsehoods.⁴ We know the nature of these policies, not only from their effect, but from the words of early proponents for these policies.

This study is an overview of how black people are processed through the criminal justice system in Maryland, with a case study of the District Court system in Salisbury. The purpose of this project is not to definitively say that the administration of law in Salisbury is totally just or unjust, but is rather akin to a sonar ping as the map of the partiality of our court systems is revealed. My hypothesis is that if the color of your skin is black, you will enter

² Bushway, Shawn D., and Anne Morrison Piehl. "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing." *Law & Society Review* 35, no. 4 (2001): 733. doi:10.2307/3185415.

³ LoBianco, Tom. "Report: Nixon's war on drugs targeted black people." CNN. March 24, 2016. Accessed October 15, 2017. <http://www.cnn.com/2016/03/23/politics/john-erlichman-richard-nixon-drug-war-blacks-hippie/index.html>.

⁴ LoBianco, Tom. "Report: Nixon's war on drugs targeted black people." CNN. March 24, 2016. Accessed October 15, 2017. <http://www.cnn.com/2016/03/23/politics/john-erlichman-richard-nixon-drug-war-blacks-hippie/index.html>.

and pass through the criminal justice system in Salisbury in a different and markedly worse way than someone white.

Literature Review

It is incredibly difficult, if even possible, to find an academic consensus on the relationship between race and law in the United States. There is not one correct description of how race affects African Americans in the criminal justice system, simply because both the “criminal justice system” and our concepts of how race affects our decisions are nebulous and ill-defined. Any navigation of such a system cannot be undertaken without significant engagement with previous scholarship on the politics of race and law in America. An excellent starting point is to determine how the variable of race interacts in surprising ways with a number of factors. To truly understand what iterations of possible racial discrimination may be nascent within the political and criminal system of Salisbury, we must understand some of the basic ways in which race has an effect on life. One of the fundamental ideas of race based analysis of criminal justice systems is that there is a fundamental difference in quality of life between black and white people in America.

The notion of racial differences in quality of life is a vague one at best, but there are specifics aspects of life that were fundamentally different across racial lines. Some analyses point to the American criminal justice system as the largest enforcer of this separation in quality of life.⁵ Alexander advances the notion of de facto caste-like differences in quality of life through more pervasive, everyday routes such as loans or housing policies.⁶ African American men and, to a smaller extent, African Americans suffer and are overly persecuted

⁵ Miller, Jerome G. Search and destroy: African-American males in the Criminal Justice System. New York: Cambridge, 2011.

⁶ Alexander, Michelle. New Jim Crow: mass incarceration in the age of colorblindness.: New Press, 2016.

under the institutions of policing and criminal law whose enumerated purposes are to protect and serve.⁷ Alexander goes a step further by suggesting that the relationship between race and status in society in America can be best described as a racial caste system.⁸ This caste system, ensures that African Americans will live more difficult lives, whether inside the justice system or outside.⁹ When we accept the caste system as an explanatory factor, the over presence of black men in prison s in the US makes more sense. The methods and routes through which that quality of life difference is enforced are numerous and varied, and many have been touched on in previous academic literature.

One iteration of subjugation is the failure of the law to adequately protect black people from men like George Zimmerman, who shot and killed Trayvon Martin, a young black kid, in 2012.¹⁰ Some studies have focused on the criminal implications of having dark skin as well as on the societal aspects of Trayvon Martin's case that aided in the acquittal of George Zimmerman after he shot and killed the unarmed 17-year-old in Florida. The case eventually distilled over time to the question of whether George Zimmerman was in fear of his life, a question often retreaded in police shooting cases. The question simplified is, can the color of someone's skin be adequate reason for one to fear for one's life when one finds yourself in a perceived confrontation? This hits on the criminalization of the African American male. Simply because Trayvon was black, the courts determined that George

⁷ Miller, Jerome G. *Search and destroy: African-American males in the Criminal Justice System*. New York: Cambridge, 2011.

⁸ Alexander, Michelle. *the New Jim Crow: mass incarceration in the age of colorblindness*. Place of publication not identified: New Press, 2016.

⁹ Ibid.

¹⁰ Bobo, Lawrence D. *Deadly Injustice: Trayvon Martin, Race, and the Criminal Justice System*. Edited by Johnson Devon, Warren Patricia Y., and Farrell Amy. NYU Press, 2015.
<http://www.jstor.org/stable/j.ctt15zc702>.

Zimmerman could reasonably attribute certain malicious characteristics to him.¹¹ The idea of the criminalization of the black man is at the heart of Miller's book.

One should focus on the perceptions of African American men in American society, and how those perceptions influence the criminal justice system. The burden of over-policing, specifically in our current society, falls heavier on the shoulders of minorities than that of the ruling-class white Americans.¹² This over policing has taken hold in our society to fill a vacuum of racial anger left after the ratification of the 13th amendment.¹³ The police are the strongest and most effective administrators of unjust racial practices in our society today, but the influence of Judges and their discretionary powers in cases can also have an impact on the outcomes of the many cases that cause systemic disenfranchisement.¹⁴

The role of the judge in most criminal cases is that of the mediator and arbiter of the final sentence. Some articles provide an in depth statistical analysis of sentencing decisions made by judges, including case studies from Maryland. Race can affect the sentencing outcome in a case through the power of the judge. The Judges' influence is often moderating,¹⁵ lessening the racial divide, but the problem of de facto quality of life difference remains, so we can only determine that it is less likely that the role of the judge is dominant in the enforcement of the quality of life difference. Steffensmeier and Demuth provide an excellent examination of some of the traditional weaknesses of case studies into judicial process. There are many pitfalls in organizing statistical analyses of this nature, including

¹¹ Ibid.

¹² Miller, Jerome G. *Search and destroy: African-American males in the Criminal Justice System*. New York: Cambridge, 2011.

¹³ Ibid.

¹⁴ Alexander, Michelle. *The New Jim Crow: mass incarceration in the age of colorblindness*. New Press, 2016.

¹⁵ Bushway, Shawn D., and Anne Morrison Piehl. "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing." *Law & Society Review* 35, no. 4 (2001): 733. Doi: 10.2307/3185415.

failure to control for legal record, maintaining a small sample size, and failing to analyze the sentencing decision as two decisions.¹⁶ The role of the judge is not always that of a moderating factor though, and Bushway and Piehl focus on the variable of recommended sentence. This variable in conjunction with other factors like mandatory sentence and race, serves to give them reasonable confidence that there is a racial disparity in sentencing in Maryland Court systems, with an outcome that shows racial motivation.¹⁷ Again, these notions of criminality and race are pervasive to our society, and affect all aspects of the criminal justice system at different levels of intensity

Another causal factor of the previously mentioned racial disparity are legislative hurdles that lead to the problem of mass incarceration including racially targeted crime laws and political manipulation of public sentiment surrounding black people. Miller and Alexander touch on this, noting multiple politicians from both political parties who continue to enact damaging policies with for-profit prisons¹⁸ and drug law enforcement.¹⁹ “Stand Your Ground” laws, such as the ones that allowed the acquittal of George Zimmerman, are another example of a legislative roadblock between black people and equal treatment under the administration of law.²⁰ Another common legislative roadblock cited is the difference in sentence requirements for crack cocaine and powder cocaine. Powder cocaine is often used in more affluent and white areas, while crack cocaine (smokeable cocaine) is often found in

¹⁶ Steffensmeier, Darrell, and Stephen Demuth. "Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?" *American Sociological Review* 65, no. 5 (2000): 705. Doi: 10.2307/2657543.

¹⁷ Bushway, Shawn D., and Anne Morrison Piehl. "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing." *Law & Society Review* 35, no. 4 (2001): 733. Doi: 10.2307/3185415.

¹⁸ Miller, Jerome G. *Search and destroy: African-American males in the Criminal Justice System*. New York: Cambridge, 2011.

¹⁹ Alexander, Michelle. *The New Jim Crow: mass incarceration in the age of colorblindness*. New Press, 2016

²⁰ Bobo, Lawrence D. *Deadly Injustice: Trayvon Martin, Race, and the Criminal Justice System*. Edited by Johnson Devon, Warren Patricia Y., and Farrell Amy. NYU Press, 2015.
<http://www.jstor.org/stable/j.ctt15zc702>.

lower income and highly African American areas. This is caused by nothing more than production and consumption costs of intoxicants, but the Fair Sentencing Act, passed in 2010 currently leaves the national sentencing disparity between the two offences at 18:1.²¹ Alexander argues that this disparity is a clear example of institutional bias against black Americans.²²

Encoded law is a vital dowsing rod for finding racial disparities, but the soft power used by politicians creates an environment for such legislative hurdles to be laid.²³ Miller argues that over-enforcement in black communities is not simply a result of a society benignly concerned about crime, but instead a result of a concerted dog-whistling campaign. The prevalence of the Willie Horton case is strong evidence of such a display disparity so to speak, where black men are criminalized excessively in the eyes of a society by politicians like George H.W. Bush.²⁴ The destruction that results from broken window policies (like stop and frisk) is a direct and intentional result of racial hatred towards minorities that can be traced back to the end of the civil war.²⁵ To put it simply, black men have been dehumanized by two major groups: politicians and the media.²⁶ The politicians, conservative and liberal, have used the dog-whistle of “crime” to fill a political gap, and the news media has gleefully sensationalized reporting on the crimes of black men and the “militant” members of the black

²¹ "Fair Sentencing Act." American Civil Liberties Union. Accessed October 11, 2017.

<https://www.aclu.org/issues/criminal-law-reform/drug-law-reform/fair-sentencing-act>.

²² Alexander, Michelle. *The New Jim Crow: mass incarceration in the age of colorblindness*. New Press, 2016

²³ Miller, Jerome G. *Search and destroy: African-American males in the Criminal Justice System*. New York: Cambridge, 2011.

²⁴ "Willie Horton Revisited." The Marshall Project. October 19, 2017. Accessed December 1, 2017.

<https://www.themarshallproject.org/2015/05/13/willie-horton-revisited>.

²⁵ Miller, Jerome G. *Search and destroy: African-American males in the Criminal Justice System*. New York: Cambridge, 2011.

²⁶ Ibid.

community.²⁷ The police are the natural executors of public sentiment when it comes to criminality, and as such they will respond to the changing public sentiment that the media and politicians push.

The criminalization of black people in our society by the powerful is pervasive, and permeates every state to some degree. As always, the behavior of police is the most stringent and misused aspect of criminal justice in many of those states.²⁸ The Baltimore Police Department's practices are a clear example of this misuse. The Civil Rights Division's report on the BPD's practices details a culture of racism and abuse of power that has festered in the Baltimore City Police Department for years. Central to the analysis are the "systemic deficiencies" that result in a great number of unconstitutional practices over a long period of time and thousands of cases.²⁹ This is a clear example of the pervasiveness of these racial ideas.

Although racial ideas are pervasive in our society, it is difficult to determine their exact scope beyond a reasonable doubt due to a great variety of factors in collecting data and analysis. Maryland's use of the death penalty (or capital punishment) was severely abused against black men for the entire time it was encoded in law.³⁰ The Maryland Commission on Capital Punishment released a report analyzing the usage of capital punishment in the state of Maryland, and recommending the abolishment of the policy in 2008.³¹ The document's relevance is clear as it examines the racial disparity of capital punishment cases and

²⁷ "Willie Horton Revisited." The Marshall Project. October 19, 2017. Accessed December 1, 2017. <https://www.themarshallproject.org/2015/05/13/willie-horton-revisited>.

²⁸ Alexander, Michelle. *The New Jim Crow: mass incarceration in the age of colorblindness.*: New Press, 2016

²⁹ Rep. (2016). Department of Justice, Civil Rights Division. *Investigation of Baltimore City Police Department*.

³⁰ USA. MD Commission on Capital Punishment. *Final Report to the General Assembly*. Compiled by Benjamin R. Civiletti.

³¹ *Ibid.*

sentences. From 1979 to 1999 there were 1,311 cases that were eligible for the death penalty, and the report determined that race played a “dominant factor” in its administration.³² This is eminently relevant to my study because any recent policy changes are not temporal demarcations in the uniform treatment of a population, but rather a set of rules mostly followed and enacted by individuals, the behavior of whom was likely affected by the existence of a discriminatory policy in the past. “Statistical Difficulties in Determining the Role of Race in Capital Cases: A Re-analysis of Data from the State of Maryland” presented data that was appropriately collected and sampled. The data from the study, much like the previously mentioned data from the Maryland Commission on Capital Punishment, has little bearing on the thesis other than as a data-point indicator for possible remaining attitudes within the Criminal Justice System of Maryland. Despite this, the focus of the paper is in re-examining the methodological issues and analytical difficulties in analyzing that type of data.³³ This study, much like the one conducted by Steffensmeier and Demuth, aided in the clarification of rigid guidelines for appropriate practices in this type of study. Key to the critique of Berk, Li, and Hickman are sampling issues where the population was too small to be generalizable.³⁴ Another inherent flaw of some studies that these authors point out is a failure to demonstrate race as an appropriately causal variable, rather than just a coincidental correlative.³⁵

“Race Differences in Sentencing” by James Unnever, Charles Frazier, and John Henretta display similar issues in data collection and analysis to those of Berk, Li, and

³² Ibid.

³³ Berk, Richard, Azusa Li, and Laura J. Hickman. “Statistical Difficulties in Determining the Role of Race in Capital Cases: A Re-analysis of Data from the State of Maryland.” *Journal of Quantitative Criminology* 21, no. 4 (2005): 365-90. Doi: 10.1007/s10940-005-7354-7.

³⁴ Ibid.

³⁵ Ibid.

Hickman. In their analysis of data, they replaced the missing data with mean data, which potentially distorts the data with a skew toward the predetermined average.³⁶ While the article briefly mentions “methodological shortcomings” as a disqualifier for studies that found incidences of such biases existing, they exhibit remarkable disregard for a selection of their sample. They analyzed one six county judicial district as their sample size, but of those six counties, only one contained a population center of over one hundred thousand.³⁷ This skewed their results, in respect to the national dialogue, to a more rural demographic which is limited to Florida. This study is just one from a group of distinguished scholars, and to declare it inadequate or deeply flawed is to miss the point of the study itself. The research aids the academic conversation by delineating possible issues in race-based statistical analysis of criminal sentencing like selection bias.

The systems of prison and criminal justice in our country fundamentally disadvantage black people in a multitude of ways. To spend time in prison is one thing, and many black people do, but the effect of such incarceration is to disenfranchise you in some states for life.³⁸ Ineligibility for government programs comes with a felony conviction, and SNAP and Section-8 benefits are removed as an option for the hard-up.³⁹ Even not including the additional deep psychological effects of losing your freedom, the overrepresentation of black people in the prison population in the United States is data of a pervasive problem in our nation’s legal system. The aspect of our legal system that has the strongest day-to-day impact is the police factor, as the police are the first officials to directly prevent and inhibit “crime”

³⁶ Unnever, James D., Charles E. Frazier, and John C. Henretta. “Race Differences in Criminal Sentencing.” *The Sociological Quarterly* 21, no. 2 (1980): 197-205. doi:10.1111/j.1533-8525.1980.tb00604.x.

³⁷ Ibid.

³⁸ Alexander, Michelle. *New Jim Crow: mass incarceration in the age of colorblindness.*: New Press, 2016.

³⁹ Miller, Jerome G. *Search and destroy: African-American males in the Criminal Justice System.* New York: Cambridge, 2011.

on the street.⁴⁰ In our national dialogue, “crime” often means the lower impact world of petty crime in disadvantaged neighborhoods, and because of our past with racial discrimination and inhibition, those neighborhoods are largely black.⁴¹

Methodology

Data

Even though there are many races and ethnicities represented in Salisbury, the court documents only show three possible variables for race: W (white), B (black), or RNA (not recorded or record not available). This tells us that there are offenders in the system who are neither white nor black, and yet will be listed as one or the other. This will possibly bias findings if the population listed as “black” is only partially black as my research is only meant to apply to the black/white dichotomy. At the same time, this discrepancy eliminates the possibility for a greater universalization of the data to racial groups beyond White and Black. The discrepancies in race identification are because the data is both available and not concrete or well managed. The charges initially brought against the defendant are also vital to analysis because they are not necessarily the exact crimes that the defendant committed, but rather what the officer arrested them for, justified or not.

Criminal record is often a factor that needs consideration when examining disparities in sentencing across racial lines, but it is important not to forget the racial roots of that analysis itself. African Americans represent 12% of monthly drug users, but comprise 32% of persons arrested for drug possession.⁴² There is already a discrepancy in the populations of prisons, 34% black in 2014, and the population of black people in the country total,

⁴⁰ Ibid.

⁴¹ Alexander, Michelle. *New Jim Crow: mass incarceration in the age of colorblindness.* New Press, 2016.

⁴² “Criminal Justice Fact Sheet.” NAACP. Accessed October 15, 2017. <http://www.naacp.org/criminal-justice-fact-sheet/>.

approximately 12.4%. This discrepancy becomes even more troubling when crossed with statistics for demographics in drug usage, which suggests that white people and black people use drugs at a similar rate.⁴³ The war on drugs, as well as the difficulty of fighting recidivism and policies meant to affect felons after they are released, causes black people in the United States to be disproportionately more likely to have a criminal record than a white person, through no fault of their own.

The “Eventual Verdict” and “Final Sentence” categories were the final metrics used for analysis, and their collection involved several oddities. In this study, a verdict is really the result of two factors: the initial plea and the judgment of the accuracy of that initial plea. For my purposes, if a defendant entered an initial guilty plea (GP), I entered that as the verdict, even though verdict implies the decision of the Judge. I want to be clear that in the case of a GP, the defendant and the defense came to the conclusion that a guilty plea would result in a more lenient result because the State was in the position to make their lives much worse if they pled Not Guilty (NGP), so the decision is that of the defendant instead of the Judge. The factor that remains the Judge’s to determine is the Final Sentence, which is broken down into three basic categories: time incarcerated, time on probation, and fines. For the latter, it is important to note that essentially all cases under examination have some form of nominal fee as a result of the verdict, even if it is just for filing paperwork. This is important to note because these fines may prove nominal and unimportant to middle or upper-class offenders, but they can be devastating to low income offenders.

One shocking detail to me was the prolific existence of Nulle Prosequi judgments. A Nulle Prosequi (herein referred to as NP or NullPros) is a judgment offered from the arbiter

⁴³ Ibid.

of the court to not prosecute a charge. In the case of offenders who faced a great number or variety of charges, some would be given a NP designation, while the offender pled guilty to the least of the offenses in order to streamline the judicial process. The effect of this process is manifold, but the main purposes are for the first party, the courts, to reduce their flow of cases, and for the second party, the defendant, to hopefully avoid a greater legal cost, like a tougher sentence. It is important to realize that a NullPros is used because of the huge number of cases that are processed through Salisbury's District Court in particular. A sort of triage goes on, where the cases that have defendants that pose a danger to society have high priority, but minor offenses and minor citations will more often be thrown out with a NP judgment.

Additional categories had to be eliminated from the data set for various reasons. Cases that were not completely resolved within the local jurisdiction, that is to say originated or ended in another state, were eliminated from analysis because the records that I required to establish basic demographic information or information about charges, verdict, or sentence were not available on the Maryland case search system. These cases would require going to out of state District Courts to get the records. Cases were also eliminated if they were kicked over to Circuit Court, simply because these were often more violent cases, which as I explained previously are more difficult to analyze. Often, the records I required could be available, but they would take far too long to go through and pair Circuit Court cases with their original intake logs in the District Court systems. Despite the eliminations, the real scope of my work is statistical analysis, so a few cases missing from the pool will not overly imbalance the data.

Coding

Charges brought against citizens are one of the most important tools to analyze the behavior of local police departments, because they are a way to list the reasons that an officer arrested someone. Those reasons, whether they are completely accurate or not, tell us something about the crime that was committed, as well as the response to it. For example, a rogue and vagabond charge coupled with a theft charge suggests that officers could have arrested a vagrant for theft and added the applicable R and V charge to enhance the likelihood of a punishment on someone the officers had determined had committed a crime. A single charge of resisting arrest with no other charges suggests something else. If another crime had been committed in the scenario, it would likely have been listed to ensure the presence of a prosecutable charge. If someone resisted arrest after shoplifting a store, the charges would be petty theft and additionally resisting arrest. The absence of an additional charge like shoplifting suggests that there was no additional charge possible. This begs the question, what was the purpose of the arrest that the citizen was resisting? Additional contexts can be added, and scenarios about misuse of police force can be incredibly tempting to analyze, but such scenarios cannot be accurately depicted with only the charges as evidence. After all, an officer of the law is given certain discretion in assigning charges because of their training and oath to serve and protect. To expand the scope, academic integrity, and meaningfulness of my work, qualitative interviews should be conducted in order to contextualize possible police misconduct in Salisbury.

The charges have been divided into three categories; Major Felonies (A), Minor Felonies (B), and Small Crime (C). The approximately forty different crimes have all been categorized as follows to the kind of defendant:

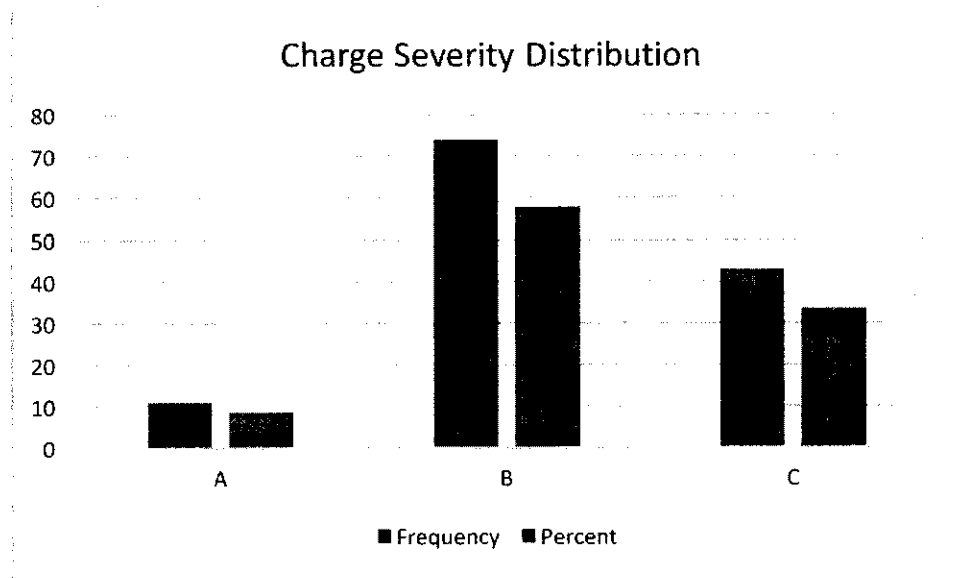
Major Felonies (A level): rape, murder, first-degree assault, and armed robbery.

Additional crimes can fall into the category of an A level offender if there are offenses sufficient in number to indicate a similar possible punishment to a conviction of a normal A level offense. An example of this is case #217, wherein the defendant was charged with 5 counts of drug possession (not marijuana), and 3 counts possession of paraphernalia, 3 counts possession of drugs with the intent to distribute. The resultant sentence was a three hundred dollar fine and two years of probation. The distinction of similar possible jail time is too disparate a variable to evenly apply that principle across the scope of analysis, so for the purposes of this analysis, four separate charges or counts must be brought from the B level category to qualify for an A level defendant.

Minor Felonies (B level): drug possession (not marijuana), second degree assault, false imprisonment, theft of less than one thousand dollars but greater than one hundred dollars, as well as the separate charge of theft from one thousand dollars to ten thousand dollars, intent to distribute narcotics or other drugs, possession and use of a dangerous or deadly weapon, credit card fraud, identity theft, both third and fourth degree burglary, destruction of property of any value (although less than and greater than one thousand dollars' worth of damage are separate charges), driving under the influence, driving while intoxicated, possession of fraud currency of various amounts, fraud, animal cruelty, and issuing bad checks.

Small Crime (C level): negligent driving, disorderly conduct, theft of less than one hundred dollars' worth, rogue and vagabond, violating an out of state order, failure to obey a lawful order from an officer, indecent exposure, second degree escape, possession of paraphernalia, trespassing, resisting arrest, harassment, violating a court order, various motor

vehicle infractions, stalking, affray, obstructing and hindering, telephone misuse, possession of marijuana, concealing a weapon, and arson threats. If many of these charges are bundled at one time for one defendant then the effect is similar to a B level offense. An excellent example of this is case #96, which had the multiple concurrent charges of disorderly conduct, failure to obey a lawful order, and two counts of disturbing the peace. The same logic applied to the B-A level upwards transfer applies to C-B level upward transfers. The jump to a B Level offender requires at least, if not more than, four charges that fall into the C category of severity.



As visible in the graph above, the frequency of B-level (mid level) charges is the greatest, at over fifty percent of the data, and the most severe charges are the least popular.

Low impact cases are important for this analysis, simply because oppression happens in everyday life and the effects are felt over time, rather than in a dramatic moment like we see in police brutality cases. “In the heat of the moment” causal factors are incredibly difficult to distinguish, as racism and fear may have had equal or similar impacts on officers’

decisions to fire their service weapons. Smaller cases such as repeated petty theft arrests in a community, consistent loitering violations and minor punitive fines levied on a population can take an economic and emotional toll on a group of people.

Once I had coded both the demographic details and the severity of charges, I was able to run more analyses on the data to determine links, whether causal or not, between racial factors and the severity of charges that the defendants were initially charged with. I mainly used crosstabs for the initial analysis, to see how frequencies of each level of offense were represented by the data pool for each race.

The basic results of both verdict and sentence can fall into three categories: the defendant going free with no consequences (1), the defendant walking with minor penalties (2), or the defendant being slapped with major penalties (3). These results are coded as follows;

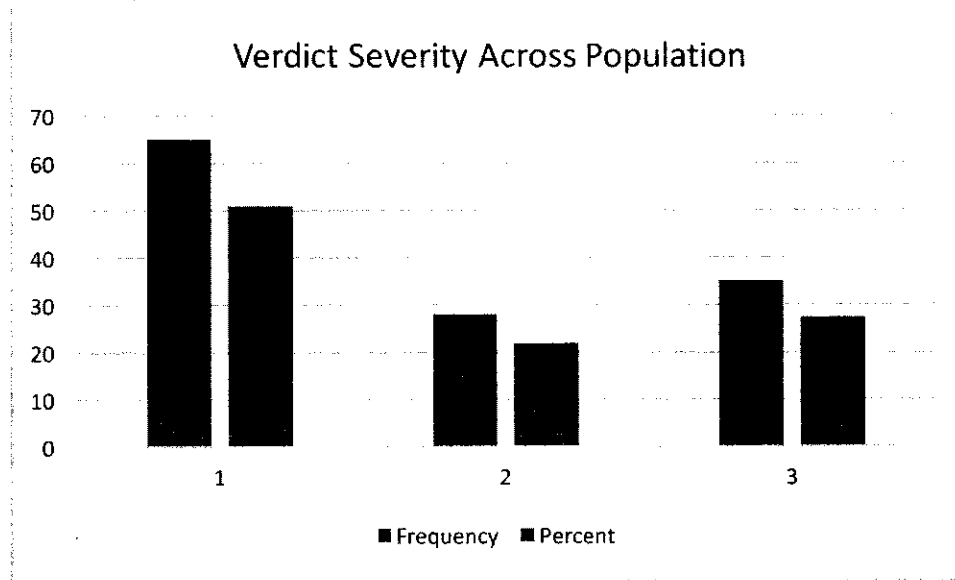
1: A Nulle Prosequi verdict issued from the judge with no accompanying fines, A Jury Acquittal, a Not-Guilty verdict (NGV), or a STET (essentially an indefinite delay on the prosecution of a case,) with no accompanying fines.

2: Minor penalties most often arise from cases with a STET verdict, a Guilty plea (GP), a not guilty plea but a guilty verdict (NGPGV), and theoretically a guilty verdict administered by a jury trial, although there were no applicable cases for analysis with that outcome. The cases that fit this category only qualify if their punishment was financial or probation up to one year.

3: This was the least common result of all the data that I analyzed and would be found in cases with an initial guilty plea (GP) or a not guilty plea with a guilty verdict (NGPGV). The resultant sentences from these cases would have to include some time incarcerated to qualify

as a case with major penalties, although the amount of time could be as low as one day.

Incarceration for even one day can result in potentially high opportunity costs for defendants, and each individual defendant would have a different opinion on how much time incarcerated would qualify as a “major penalty”. Weekend incarceration also counts as a “major penalty.”



In the above chart, it is clear that the minor penalties (fines) were the most popular final result of cases brought to the courts. Notably however, probation is less popular than time spent incarcerated as an overall final result.

Another aspect of coding that was necessary for a quality analysis was the further breakdown I did of the most popular and interesting crimes. For offenders who were only charged with one crime, I broke the crimes down further than their initial large grouping, labeling rape, murder, and first-degree assault as 1, drug possession as 2, second-degree assault as 3, disorderly conduct as 4, rogue and vagabond as 5, failure to obey a lawful order as 6, resisting arrest as 7, and obstructing and hindering an 8. When I went to examine offenders who were only charged with one count of the crimes previously listed, I realized

that fewer than 20 offenders fell into that category, making statistical analysis less than productive.

Findings

The first aspect of analysis after collection was a simple frequency test to determine the approximate demographic details of my analysis pool. Of all of the 228 cases with complete demographic data about 70% were men and 30% were women. After that initial binary breakdown, I further divided the respondents by race, revealing that of all the cases available, that is to say charged and tried with all documents present, 57% were black men, while only 43% were white men. There is already a disparity between the ratio of white to black men arrested when compared with the 2012 demographic statistics for the city, which show just above 35% of the population being black, and just over 50% white.⁴⁴ The ratio of white people to black people in the city is 1.435, while the ratio of white men who were arrested, charged, and had a verdict handed down compared to black men who had the same is .7472. When adding female respondents to the mix, the ratio balances out slightly, with White people etc. to Black people etc. being .824. The existence of a disparity here is important to the research, and definitely suggests an inequality in how different races pass through the court system of Salisbury, but it is by no means a damning indictment.

The presence of white people in prison does not invalidate the criticism of the criminal justice system as disadvantaging minorities. Discontentment with the justice system is partially caused by a visible overrepresentation of black bodies, not through an exclusion of white or latino ones. Additional reasoning that because black people sometimes get off in

⁴⁴ "Salisbury," Salisbury, MD Demographics and Population Statistics - NeighborhoodScout. Accessed October 1, 2017. <https://www.neighborhoodscout.com/md/salisbury/demographics>.

cases, racial discrimination doesn't exist in the court systems is flawed. This is a systemic issue and is not proved or disproved by individual cases but instead by larger scale analysis.

Once I had coded the crimes to their respective categories of severity from most severe to least severe (A-C), I performed crosstabs to determine discrepancies with how Black people were charged as opposed to White people.

Severity			A	B	C
	Black	Count	6	45	21
		% within Chargsev	54.50%	60.80%	48.80%
	White	Count	5	29	22
		% within Chargsev	45.50%	39.20%	51.20%

As you can see above, Black people were more often charged with high severity (or A-level) offenses, although the ratio may be misleading because of the small number of cases (11) that fit the requirements for an A-level defendant. The B group is much more interesting, as 60.8% of all people charged at the B-level of crimes were Black, and only the corresponding 39.2% of the data pool for that level were White. The most important piece of information gleaned from this information so far is that only for the lowest levels of offenses did White people actually represent a majority of those defendants charged, and only just so with 51.2%.

The chi-square test indicates a statistically significant relationship between the severity of charges and a person's race. This is important and interesting because the rule of law should be impartial, and any discrepancies across racial boundaries can be damaging to relations between the police force and a community.

If, when analyzing cases at the judicial level, there are a great number of low impact cases (C level cases) that have not been prosecuted, it is possible that the police department

of a given area is disproportionately active in communities of color. This assumption can be further validated and contextualized by cross referencing the rates at which Whites are arrested or charged with a petty crime (or C level offense) and the same rate for Black people, and then comparing that percentage and proportion to the overall demographic statistics for the area of analysis; the city of Salisbury.

Upon recoding the combination of verdict and sentence, I created another cross tabulation of race and verdict result, which is depicted below.

Severity			1	2	3
	Black				
		% within Race	55.60%	20.80%	23.60%
		% of Total	31.30%	11.70%	13.30%
	White				
		% within Race	44.60%	23.20%	32.10%
		% of Total	19.50%	10.20%	14.10%

An interesting factor to note for this part of the data is that Black people tended to be given a more lenient result than white people, with 55.6% of all Black people recorded getting off with no fines, probation, or time served, while only 44.6% of white people got the same. Additionally, 20.8% of Black people received some combination of fines below five-hundred dollars and probation, while 23.2% of Whites received the same level result. And finally, only 23.6% of black defendants analyzed were incarcerated, while a much higher percentage of Whites (32.1%) ended up serving jail time.

The chi-square once again reveals a statistically significant relationship between the severity of a final verdict and a person's race. This is fascinating because it suggests that the justice system in Salisbury may possibly be influenced by racial variables.

The scope of my project also proved a challenge in both logistical directions. My project required the time-consuming collection of large amounts of disparate and scattered data, while the area of study is small enough that few specific academic studies had been published on the area. The most popular studies done on the relationship between the criminal justice system in Maryland and race has been literature on the state's misuse of the death penalty, which has already been legislated out of existence. Those studies are relevant to my area of analysis, but they are not directly and imminently necessary for analysis.

Anecdotal Data

As a necessity of my data collection, I looked at over one thousand scans of court documents. One of these court documents that I would turn to for clarification in certain cases was titled "Document Issue" in the computer system and, in lucky cases, would contain all or most of the data that aided in contextualizing the different charges against the perpetrator. This was vital because a charge of "disorderly conduct" can be easily abused without evidence, and administered unfairly. The following information was procured from the Case Search System at the District Court of the City of Salisbury, specifically the Document Issue and Statement of Charges forms.

The names below have been altered to protect the identity of the charged. The case of John D caught my interest initially for the combination of charges: obstructing and hindering and disorderly conduct. Both charges are fairly discretion based for the arresting officer, and therefore highly susceptible to misuse. I examined the case further, and in the justification section of the Document Issue I found an entire account of all that had happened. Essentially, in searching for a black shoplifting subject, an officer stopped John on his way home and advised him that he matched the description of the shoplifting subject (although the statement

does not identify how, other than being black). When the officer asked for his ID, John started voicing his annoyance, eventually raising his voice to yell that others film his interaction with the officer. After John yelled to others, the officer placed him in “investigative detention” and in handcuffs. Afterwards the store manager arrived and identified John as not the shoplifter. Obviously, John began requesting that the officers take the handcuffs off. They did not. They arrested him on charges of obstructing and hindering arrest and disorderly conduct. John served one day in jail.

John committed no crime, and the case was not prosecuted, but he still spent a day and night in jail. He was forcibly denied his freedom because he voiced anger at being stopped because he was black. John was in the wrong place at the wrong time, and because he “fit a description,” he was detained. This story, when paired with the statistical data, paints a picture of a justice system that over-represents black people at multiple points in the process of justice.

Conclusion

The disparity that my data shows suggests that it is possible being black impacts your passage through the criminal justice system of Salisbury. Additionally, this effect is more negative than positive, although many cases brought before a judge are moderated in a way that from a statistical analysis standpoint appear fair and evenhanded. Thus the statistical data as well as anecdotal data points to the intake section of the criminal justice system: the police force of Salisbury. More research must be done before coming to a conclusion about the policies and tactics of the local police department, but it is clear that racial disparities exist in the intake. It appears that local and state police operating in the area engage in a pattern of behavior with a de facto racially discriminatory effect. Black people are arrested at higher

rates than whites, despite making up less of the local population. The proportional difference isn't even close to even distribution across racial boundaries, although the causal factors are difficult to determine, as elucidated in the previous literature review.

The literature review and previous scholarship about race's influence in criminal justice suggests that the most egregious disparity exists in the police departments. The findings in the case of Salisbury also suggest that an unwarranted disparity may exist because of the local police department's practices. The disparity in charge quantities per race was much larger than the disparity in sentencing outcomes. The sentencing outcomes are where the judge has discretionary power, and the charges are where local police officers have discretionary power. As there is a disparity in the second, it is possible that the largest section of the criminal justice system responsible for that aspect (the police department of Salisbury) may view race as a motivating factor.

There are many explanatory variables for the discrepant crime rates in different parts of a city or jurisdiction, inconsistencies in crimes committed by race, and general racial attitudes of a local police department, all can cause disparity in different degrees. This, however, is not the point. The importance of a racial disparity is not the cause, but rather the effect, which is a burden on communities of color, unless data can be offered to suggest that areas of enforcement are justified for their apparently disproportionate involvement. The burden of proof for justifying the high police presence in these communities should fall on the shoulders of the law rather than the community, because communities, much like the individuals that they are made up of, are innocent until proven guilty.

The system of slavery was just one iteration of a system meant to subjugate blacks below the social position of whites. The current system is still meant to subjugate, but, like

slavery, its ability to operate lies beyond the confines of law and into the murkier study of social structures at large. In the course of this analysis, data regarding the distribution of charges across the racial spectrum of black and white people suggests that the Salisbury Police Department may engage in racially discriminatory practices of over policing black populations in the city, but further qualitative analysis should be completed before the results can be confirmed.

Future Research: Challenges and Obstacles

The strongest aspects of this preliminary study are the existence and administration of nominal fines across vulnerable populations, and the anecdotal data from analysis of court documents. If given the opportunity, I can expand on this initial research with a series of qualitative interviews. Among the interviewees would be defendants from other cases with possible police misconduct, as well as officials in the Salisbury police department and city government.

The specific documents in which I generally found my data points remained fairly constant from case to case, with minor variations. "Document Issue" was often the initial document from which I gathered demographic data, as it was the sheet that the officer was given to summon or arrest and bring the charged offender to court. Most of the time, the document was available, and race, sex, and initial charges could all be found in each separate document. There was some disparity in that some cases received multiple copies of this form for each charge listed, sometimes totaling up to fifteen pages. The additional documents I analyzed were the pre-trial docket and the trial docket, as well as any special addendums that the courts added on a small number of cases. The pretrial docket and the trial docket

provided me with the charges that were prosecuted in court, as well as the verdict, and, if applicable, the eventual sentence of the defendant. Additional documents sometimes contained adjustments in the offender's sentence, or, if the defendant had not arrived for their court date, there was a warrant on file for them, as well as a listed FTA (Failure To Appear). I did encounter some difficulties with the documents being misfiled, which happened often enough to possibly impact the results of my analysis. The most common error of this type was for a pre-trial docket to be filed as a final trial docket. The pre-trial dockets did not have the verdict or sentencing details that I required from a trial docket, so cases where this misfiling occurred had to be completely eliminated from my analysis.

The problem of illegibility and sentencing detail muddiness coincide to make analysis of the interesting case of nominal fines more difficult. Nominal fines are perhaps the most promising aspect of my research, but the non-uniform manner in which their presence or absence was noted on court documents made it impossible for me to determine with one hundred percent certainty which defendants ended up having to pay nominal court costs. If able to continue my research, I could dedicate much more time to determining the impact of these nominal fines on poorer communities. Most STET verdicts and some Nulle Prosequi verdicts came attached to fines between twenty and sixty dollars. That amount of money may not mean much to a person with an established career, but for many people it could be rent money or even more, and such a fine could possibly prove burdensome to a whole community if administered widely enough. The real challenge in determining the impact of this issue is, as mentioned previously, the inaccuracies and inconsistencies in official court paperwork.

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