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The Racialized Governance of the Poor in Low Level Misdemeanor Courts

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Abstract

The Racialized Governance of the Poor in Low Level Misdemeanor Courts

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This dissertation focuses on the misdemeanor court system and how it regulates and manages millions of people. In the misdemeanor court system, courtroom actors deploy a rehabilitative rhetoric that encourages defendants to get on the right track and be better market actors in a process I term “predatory rehabilitation.” Defendant after defendant described the hardships that paying fines and fees caused for themselves and their families. Additionally, defendants cannot get on the right track due to the extraction of time. Cases can take prolonged periods to resolve, often requiring up to ten appearances. Defendants in the study described in great detail the difficulties in having to show up to court, having their cases reset, missing work, getting second jobs to pay for fines, and finding childcare.

Predatory rehabilitation is a process that affects people differentially based on race and class. Punishment operates very differently for marginalized communities. For segments of the population that have money, knowledge, and resources, minor violations do little to disrupt their lives by allowing them to pay their fines with no consequences, hire attorneys, and choose options that will keep their records clean. The lack of surveillance in wealthier communities makes further run-ins with the legal system less likely, ensuring a smooth resolution and no record. Additionally, inequality is amplified inside the courtroom. Because poorer and minority defendants are more likely to end up in court, they are more likely to

interact with the court and be subjects of its regulation. This regulation includes punishment for inappropriate courtroom behavior, lack of cultural knowledge in interacting with courtroom actors and not being trusted. Overall, I find that poor and minority defendants are more likely to end up in court, more likely to be affected by the extraction of time and money, more likely to be punished for inappropriate behavior, and are less likely to be believed by judges and prosecutors while wealthier and white defendants have radically different experiences navigating the misdemeanors court system.

Finally, continued interactions and regulation by the misdemeanors system have profound effects on political socialization. They shape the ways in which people apprehend the political world they inhabit and how they understand their political standing. State actors, particularly judges and prosecutors, encourage defendants to be productive and active citizens, all the while their own institutional roles entail facilitating predatory and extractive practices that drain defendants of resources and time. These interactions then frame defendants' conceptualizations of "the state," "democracy," and their relationships to them. The end result is a deep sense of estrangement towards the state and government institutions. Defendants describe the political process in cynical terms and the vast majority do not vote. Yet quite revealingly, many defendants remain active and engaged in their communities through direct avenues of solidarity outside of traditional government institutions.

This study contributes to a broader understanding of the state, the misdemeanor court system, political socialization, compound inequality, and rehabilitation. Poor and minority defendants in the misdemeanor court system deal with great hardships and form an adversarial relationship with the state while the state simultaneously expects them to be productive,

market-oriented actors that are getting their lives on track. Instead, the misdemeanor court system is perpetuating conflict, affecting political socialization, and amplifying inequality.

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CHAPTER 1

Introduction

James is a 62-year-old retired and disabled veteran living in a small Texas city near the border. For the past 15 years, he has been dealing with the misdemeanor court system. He owes over \$1500 in fines and fees all based on one traffic stop. The fines and fees are for a combination of charges ranging from no registration to expired plates. He has spent time in jail, made countless court appearances, attempted to acquire legal services, and endlessly tried to prove that his disability makes paying the monetary sanctions completely impossible. The charges have prevented James from acquiring a driver's license, which made it difficult for him to get to where he needs to go. For example, he had a heart attack several years ago and had to call himself a cab to get to the hospital. It can be hard to accept that one traffic stop from so long ago can so greatly affect someone's life. Perhaps the most incredible part of this story is that James has never been convicted of a crime. This case cannot be fully captured in most criminal justice statistics. It involves no arrest, no guilty conviction, and no prison time. What we do know is that there are about ten million misdemeanor cases every year, almost five times the amount of felony cases (Natapoff 2011). In fact, the vast majority, about 80 percent of state criminal cases are misdemeanors. How do we make sense of this case and the millions more like it that happen every year?

This dissertation focuses its attention on misdemeanor courts in order to provide insight into how the criminal legal system regulates and manages the millions of people for whom the most common interaction with the state is dealing with courts for minor infractions. Millions of people are navigating the misdemeanor system without adjudication, much less conviction or imprisonment (Natapoff 2011). What effect does this criminal legal contact

have, particularly on communities that already face economic challenges and increased surveillance by the state? Research on the welfare state suggests that when marginalized communities interact with the state, they become immersed “in new incentive systems, modes of pedagogy, and reformative experiences of market relations” (Soss, Fording, and Schram 2011:8).

Malcolm Feeley’s seminal work from almost 40 years ago demonstrated the important role lower-level courts play in punishing defendants apart from and often without conviction (Feeley 1979). He observed that defendants rarely opted for jury trials and instead resolved their cases largely through plea-bargaining. He also found that simple cases take extended periods to resolve, sometimes requiring eight to ten appearances. This adds up to austere costs for defendants that include procuring counsel and the opportunity costs of not using an attorney, the loss of work time associated with pretrial detention, and the cost increases caused by continuances (Feeley 1979). Having to show up over and over again requires lost work time and stress. Altogether, these findings point to his crucial point that the punishment is the process itself. More recently, work by Issa Kohler-Hausmann (2018) and Alexandra Natapoff (2018) has brought a critical focus back to this often-overlooked arena of the criminal legal system.

Misdemeanors are a broad term for a variety of low-level, non-violent criminal offenses. Misdemeanors are often penalized by fines, community monitoring, or other noncustodial sanctions, rather than lengthy imprisonment or prison sentences in most states. More specifically, the lowest form of misdemeanors are classified as Class C. Class C misdemeanors are fine-only charges that do not carry a prison sentence and do not guarantee legal representation. Attorney representation, when it does exist, is provided by

private attorneys. Excessive speeding, driving without a license, and expired registration account for more than 80% of all Class C misdemeanor cases in Texas (Office of Court Administration 2018). Payments can be made by mail, online, or in person. Defendants, on the other hand, who seek to dispute their charges, are unable to conclude their cases quickly, or lack the financial resources to pay monetary punishments, must navigate a complex network of justice of the peace and municipal courts and risk extra sanctions, including possible jail time (Needham et al 2020).

The assessment and collection of fines and fees as punishment for Class C misdemeanors in Texas has grown tremendously over the past 25 years, rising from around \$700 million in the mid-1990s to over \$1.2 billion (Office of Court Administration 2018). Furthermore, this collection is concentrated unequally and aligns with other historical markers of inequality. Counties with higher percentages of Black and Latino populations and more conservative counties collect more fines and fees per capita (Slavinski and Pettit 2021).

This dissertation continues the study of misdemeanors and makes several new and important contributions to help us understand the misdemeanor court system. First, it explores a key paradox. On one hand, judges and prosecutors within the misdemeanor court system want to deter crime and express a sincere desire to rehabilitate criminal defendants. On the other hand, they engage in extractive practices that make deterrence and rehabilitation very difficult. In order to address the aforementioned paradox, I propose the concept of predatory rehabilitation. This refers to misdemeanor courts' systematic extraction of limited financial resources and time from vulnerable populations while deploying a rehabilitative rhetoric that attempts to shape and mold defendants into productive, market-oriented citizens.

Through interviews with judges, prosecutors, and misdemeanor defendants, supplemented with participant observation, the first chapter explores this paradox and provides a detailed account of the ways in which judges and prosecutors conceptualize their role in the misdemeanor system. Judges and prosecutors express a sincere desire to get defendants on the right track. According to them, this means working stable jobs, finishing degrees, taking care of their families, and staying out of trouble. It then turns its focus to defendants who describe in great detail the burdens, stress, and difficulties caused by the two most common forms of punishment in the misdemeanor system: legal financial obligations and the arduous time requirements necessary to fulfill court obligations. This extraction of defendant time and money makes getting on the right track nearly impossible.

The third chapter makes another important and unique contribution. The misdemeanor court system looks very different for different people. Inside every courtroom during my fieldwork, in which the jurisdictions ranged from wealthy and white suburbs to poorer cities with large minority populations, the vast majority of people in the courtroom were people of color. A large body of literature has demonstrated that poor, minority communities face increased surveillance and are more likely to be pulled over for traffic violations (Crutchfield et al. 2009; Fagan et al. 2016; Rios 2011), but this did not explain why even in wealthy, white jurisdictions, courtrooms are filled with people of color and people facing economic challenges.

Interviews with defense attorneys and defendants illuminated two important contributing factors. First, police in wealthy jurisdictions target vehicles that look out of place and charge drivers with violations like expired plates and registrations or no insurance. Second, well-resourced defendants have the ability to take care of their cases without showing

up to court. They are more likely to be able to afford the fines and fees, allowing them to pay online or over the phone. Additionally, they can hire an attorney to go and take care of the case for them. For defendants that can't afford to pay or want to contest their charges, this means showing up to court and navigating the court system.

Once misdemeanor defendants are in the courtroom, additional processes exacerbate inequality as well. Existing work on compound inequality in the criminal legal system has looked at official stages of processing (Kurlychek and Johnson 2019; Kutateladze et al. 2014; Kutateladze and Lawson 2018; Stolzenberg, D'Alessio, and Eitle 2013; Wu 2016). I build on that work by documenting the ways in which courts also contribute to inequality through less official avenues. They dole out punishment for inappropriate courtroom behavior and lack of cultural knowledge in interacting with courtroom actors. I also find that the court is mistrusting of many misdemeanor defendants. On the other hand, exhibiting appropriate behavior, showing proper forms of respect, and being trusted can all help a defendant end up with a better outcome. All of these processes are classed and racialized.

Finally, chapter four explores how the unequal and oftentimes predatory regulation of misdemeanors courts affects political socialization. It asks whether continued adversarial interactions with the state in one specific arena, the misdemeanor courtroom, affects political participation and whether it makes people less likely to participate in official political channels. I find that state actors, in this case judges and prosecutors, encourage defendants to be productive and active citizens, all the while facilitating predatory and extractive practices that extract defendants of resources and time. Additionally, participant observations in various courtrooms illuminate the adversarial nature of courtroom interactions. Judges, prosecutors, and other courtroom actors like clerks and bailiffs often reprimand, scold, lecture, and

embarrass misdemeanor defendants. This extraction and conflict lead to estrangement towards the state and government institutions. Misdemeanor defendants' descriptions of their experiences with the court are filled with struggles and the vast majority do not vote. Importantly, this estrangement does not prevent defendants from remaining engaged in their communities through unofficial avenues. Many describe doing volunteer work and engaging in their communities.

Taken together, the three chapters provide a detailed and rich picture of the misdemeanor court system with many implications for how we think about the criminal legal system and the state more broadly. It reminds us that for millions of people, the most common interaction they have with the state is a negative experience. Whether the experience is negative is largely dependent on race and class. Communities already facing more surveillance are more likely to face misdemeanor regulation. They are more likely to end up in the courtroom and more likely to be punished when they get there. Legal financial obligations drain people with limited financial means of their already scarce resources. Arduous time requirements create additional difficulties. These negative experiences can add up and have profound effects on the ways that citizens view the state and their role within it (Lawless and Fox 2001; Soss et al. 2011; Weaver, Prowse, and Piston 2019).

Importantly, I also demonstrate that the judges and prosecutors have a sincere desire to help and rehabilitate defendants. The state and criminal legal system has not abandoned its rehabilitative functions as other scholars have argued (Simon 2007; Wacquant 2009). Unfortunately, rehabilitation is largely rhetorical. Resources and material assistance are not provided to help people get on the right track. In fact, resources are taken away from people who desperately need them. This paradox calls into question the logic underpinning the

misdemeanor punishment regime. Does the assessment and collection of legal financial obligations, coupled with court-mandated requirements that drain defendants of their time, contribute to justice? Do these punishments affect everyone equally or do they have a profoundly more serious impact on the lives of the already vulnerable and marginalized? The answers to these questions have important implications for how misdemeanor courts are conceptualized and the policies and legislation surrounding the misdemeanor punishment regime.

CHAPTER 2

Predatory Rehabilitation: Misdemeanor Courts as Neo-Liberal Institutions of Control

Historically, the study of criminal justice has centered on issues related to incarceration. Although the prison looms large in both the public and scholarly imaginations and tends to dominate criminal justice discourse, it represents a small portion of the criminal legal system. In 2009, approximately 10 million misdemeanor cases were filed, compared to about 728,000 new prison admissions (Natapoff 2018). Recognizing that the prevalence of arrests and convictions for misdemeanors raises many important issues about, for instance, their impacts on vulnerable populations, a growing body of literature has started to examine this massive system of misdemeanor courts (Kohler-Hausmann 2018; Natapoff 2011; Natapoff 2018).

This paper builds upon and expands this literature by examining a key paradox that lies at the heart of misdemeanors. On one hand, misdemeanor courtrooms and decision-makers want to deter crime and rehabilitate criminal defendants. On the other hand, they engage in extractive practices that make deterrence and rehabilitation extremely challenging. In order to address the aforementioned paradox, I propose the concept of predatory rehabilitation. This refers to misdemeanor courts' systematic extraction of limited financial resources and time from vulnerable populations while deploying a rehabilitative rhetoric that attempts to shape and mold defendants into productive, market-oriented citizens. In the driving theoretical work in the literature on misdemeanors, Kohler-Hausmann (2018) posits the system as one of managerial justice. The system supervises the population in an effort to sort and regulate people over time and figure out whether defendants are rule-abiding. This paper builds upon and expands this literature by situating misdemeanor courts within a larger

system of predatory neoliberal poverty governance that extracts material and immaterial resources from the poor.

Weaving together theoretical insights from three distinct bodies of literature, including research on legal financial obligations (LFOs), the sociology of time and waiting, and analyses of the neoliberal character of the criminal legal system, I construct an integrated conceptual framework. Recent research demonstrating LFOs' ubiquity and rapid expansion in recent decades has made it clear that they have become a dominant form of punishment, and further, that they constitute the system's principal mechanism of financial extraction from justice-involved people (Harris 2016; Martin et al. 2018). Jurisdictions across the country assess fines and fees for all levels of offenses, sometimes in the absence of a criminal conviction (Taggart and Campbell 2015; United States Department of Justice 2015). Crucially, the demands that the criminal legal system places on defendants' resources extend beyond the realms of monetary sanctions. Perhaps less obvious given their immateriality, time burdens and waiting can function as punishment and thus play an important role in the articulation of state power (Auyero 2012; Bourdieu 2000; Feeley 1979). Finally, scholarly interrogation of the welfare state has suggested that when marginalized communities interact with the state, they become immersed "in new incentive systems, modes of pedagogy, and reformatory experiences of market relations" (Soss, Fording, and Schram 2011:8). This reformatory experience of market relations has made its way into the criminal legal system. Research on parole (Lynch 2000; Miller 2014), policing (Stuart 2016), and bail (Page, Piehowski, and Soss 2019) capture different yet parallel manifestations of this creeping of neoliberal ideology into various practices of punishment.

Based on ethnographic observation of approximately 3,000 misdemeanor cases across a diverse set of misdemeanor jurisdictions in the state of Texas and interviews with 62 defendants, 17 judges, and 18 prosecutors, this study examines whether and how this dual process of predation and rehabilitation happens in low-level misdemeanor courts. Findings reveal that courts engage in predatory practices and therefore the stated goals of rehabilitation in the form of encouraging desistance from criminal activity, employment, or going back to school, is an unsuccessful project for two reasons. First and foremost, the extraction of defendants' time and resources hinders their ability to demonstrate rehabilitation in the eyes of the courts. Second, judges and prosecutors often see hundreds of defendants per day, making it impossible for them to address and understand the context of the offense. This creates a cycle where members of poor communities are caught in a system that wants them to prove their worth without giving them the resources and support necessary to succeed.

Interview data illuminate significant and consequential distinctions between the ways in which judges and prosecutors, on the one hand, and defendants, on the other, conceptualize the goals and practices of misdemeanor courts. Results demonstrate that misdemeanor courts engage in predatory rehabilitation by wresting financial resources through monetary sanctions, extracting time by requiring that defendants repeatedly show up to court and other commitments, and through the disparate treatment of defendants based on their perceived value as market-based actors. Courtroom observation and interviews with prosecutors and judges reveal the unequal treatment and market-based valuation of defendants, while interviews with defendants illuminate the predatory nature of these practices and the profound effects they have on the lives of already marginalized populations. Results have important

implications for contemporary debates surrounding the role of rehabilitation in contemporary criminal legal practices.

THEORETICAL BACKGROUND

Criminal Justice Predation

Low-level misdemeanor courts have a variety of tools at their disposal to dole out punishment including community service, probation, and credit for time served, therapeutic programs, and classes. The most commonly assessed category of criminal sanction is comprised of LFOs—fines, fees, surcharges, restitution, and any other costs associated with a violation or criminal conviction (Martin et al. 2018; Slayton 2014). In Texas alone, municipalities and county courts collected over \$1 billion for minor misdemeanor infractions in 2016, more than doubling from about \$500 million 15 years earlier (Office of Court Administrators 2018).

Monetary sanctions uniquely disadvantage certain subgroups of the population, particularly the poor (Harris 2016; United States Department of Justice 2015). According to Katzenstein and Waller (2015), monetary sanctions represent an “inverted welfare system” that “taxes poor families to help fund the state’s project of poverty governance” (639). Both inside and outside the criminal legal system, predatory extraction of financial resources engulfs the lives of the poor (Fergus 2014). As Page and Soss (2018) put it, “from payday loans to furniture rentals, variable-rate credit cards, and subprime mortgages and auto loans, corporations have devised a remarkable array of predatory techniques that demonstrate how the limited resources in low-income communities can be leveraged in profitable ways” (149). These techniques have made their way deep into the criminal legal system. Misdemeanor courts, by collecting billions of dollars for a wide variety of fines and fees, represent one such form of predation. For example, the Ferguson Commission concluded that legal financial

obligations were exploitative, used to generate government revenue, and “disproportionately harmed defendants with low incomes” (Ferguson Commission 2015:93).

Work on the bail system has explicated how the bail industry extracts millions of dollars from marginalized communities and does so regardless of guilt or innocence (Gupta, Hansman, and Frenchman 2016; Page et al. 2019). Work on incarceration has demonstrated the predatory nature of private service providers within prisons (Bosworth 2009). One striking example is the private control over telephone communication in public prisons, an industry recently valued at \$1.2 billion (Page and Soss 2018).

In addition to extracting limited and valuable financial resources, the criminal legal system extracts an enormous amount of time from defendants, both prior to and outside of “time served” in prison. Studies on broader state projects have cataloged ways in which time and waiting emerge in expressions of state power (Bourdieu 2000). Auyero (2012), for instance, described applicants’ and beneficiaries’ experiences of waiting in welfare offices leading to confusion and a sense of arbitrary punishment. Building on Schwartz’s (1974) work, Auyero illustrated the socioeconomic stratification of waiting. That is, people with more power and status generally spend less time interacting with the state. More recently, research on eviction has shown that waiting is a source of anguish for mobile home residents (Sullivan 2018).

The extraction of time is a central feature of contemporary punishment, yet it is surprisingly undertheorized. Accounts of jail and prison have documented the many junctures at which carceral subjects are made to wait: inmates wait for their hearing, to use the phone, for visitors, and to be released (Cohen and Taylor 1972; Irwin 2013). Standing idly in long lines in order to visit prisoners has been conceptualized as a form of secondary prisonization

for partners and family members of the incarcerated population (Comfort 2009). Formerly incarcerated populations spend countless hours managing criminal legal and welfare institutions (Halushka 2020). Evidence shows that even simple misdemeanor cases take extended periods to resolve, sometimes requiring eight to ten appearances. This lengthy process comes with significant costs (e.g., attorney fees, lost wages, stress) that compound one another as the process draws on (Feeley 1979). In her ethnographic examination of misdemeanor justice in New York City criminal courts, Kohler-Hausmann (2018) found procedural hassle to be a salient aspect of defendants' system interactions. This refers to the "delaying, engaging, and compelling the defendant to conform to the institutional and organizational demands of the court and court actors" (183). In the course of her fieldwork, she encountered defendants waiting in jails for up to 12 hours, taking time off from work to show up to court, standing in long security lines, sitting in the courthouse for hours, and having cases reset, thus requiring them to do it all again. Work on eviction and the welfare system demonstrates that for marginalized communities, all of this waiting takes a psychological toll and creates serious obstacles in all facets of their lives (Auyero 2012; Piven and Cloward 1971; Redko, Rapp, and Carlson 2006; Sullivan 2018).

Neoliberalism and the Criminal Legal System

Neoliberal ideology, which began its ascension alongside the vast carceral expansion that marked the initiation of the mass incarceration era, extends market rationalities to a host of social, economic, and political relations, including the criminal legal system (Brown 2006; Dilts 2010; Page and Soss 2018). Scholars have posited that not only are criminal legal institutions becoming more geared toward the market (Page and Soss 2018; Soss et al. 2011; Wacquant 2009), they are also taking the place of social service institutions such as mental

health facilities and using private contractors to provide mental health and medical services inside correctional facilities (Comfort 2009; Lara-Millán 2017; Swanson 2015).

Recent work on all levels of the criminal legal system illuminates this neoliberal turn in punishment practices. For example, austerity measures have diminished social services, forcing police officers to take responsibility for managing social services for the poorest and most vulnerable (Stuart 2016). This type of policing occurs in the context of a state that wants to produce citizens who can enter the market and paints the poor as personal failures, obscuring the structural causes of their poverty. Other relevant studies have highlighted that policing and surveillance alter how people move through the world, participate in society, and conceive of themselves as individuals and citizens (Brayne 2014; Goffman 2015; Lerman and Weaver 2014; Rios 2011).

Neoliberal practices and ideology are also present in the lives of the formerly incarcerated. Due to structural shifts that have made jobs harder to find and rhetoric that places blame on poor individual choices, current prison reentry programs concentrate on changing individual dispositions and attitudes (Miller 2014). Parole agencies engage in reformatory and rehabilitative rhetoric but lack the resources and commitment to achieve these goals (Lynch 2000).

This same logic of individualism, personal failings, and productive market-oriented citizenship operates in the courtroom. In misdemeanor courts, punishment begins long before any conviction, through a set of frequently onerous requirements such as numerous court appearances, community service, or classes and rehabilitative programs. Performance of these court practices has been theorized as a demonstration of a defendant's worthiness and ability to engage in the social order (Kohler-Hausmann, 2018). Scholars have argued that the core of

this social order is the neoliberal marketplace, one that organizes social, political, and economic relations around principles of market rationality (Brown 2006). Misdemeanor defendants should therefore be viewed as clients of the state and, as welfare scholarship (Collins and Mayer 2010; Hays 2004; Soss et al. 2011), clients of the state are judged by their ability to perform as market actors.

Courts place a premium on their subjects demonstrating efforts to embody productive citizenship, yet at the same time, they impose requirements that tend to subvert that very goal. For example, showing up to court over and over again makes it difficult to maintain employment. Moreover, the aggregation of criminal offenders, large dockets, and the seldomness of trials contribute to extreme depersonalization where individual circumstances become irrelevant (Feeley and Simon, 1992). Prosecutors and judges make quick and superficial judgments based on appearance, attitude, and some simple questions, but they still ignore many individual circumstances and reasons for committing alleged offenses. Accounting at least partly for this rapid and rote case processing, which many observers have likened to the assembly line (Livingston 1997), misdemeanor dockets often schedule over one hundred individuals per hour. This constant stream of bodies afforded 30 seconds of face time with the judge hints at a degree of hollowness to the rhetoric of individual responsibility and the purported goal of rehabilitation. Much like parolees and prison reentry program participants, misdemeanor defendants are expected to transform as individuals without the necessary resources to do so.

DATA AND METHODS

This research is based on two years of qualitative fieldwork in 10 misdemeanor jurisdictions in the state of Texas, a state that routinely handles over 7 million misdemeanor cases a year (Office of Court Administrators 2016). To investigate whether and to what extent misdemeanor courts extract time and resources while espousing a rhetoric of rehabilitation, I conducted interviews with 62 court defendants, 18 prosecutors, and 17 judges.

Respondents originated from a wide range of backgrounds. Most of the defendants were low-income. About 39% of interviewees identified as Black, while 36% identified as white (36%), and 33% identified as Latino or Hispanic. Judges and prosecutors were recruited in person by observing courtrooms and asking to speak to them. Demographics varied widely by region. Overall judges were about three-quarters (76%) male. All of the female judges interviewed were in large urban cities. Eight (53%) judges identified as Latino or Hispanic, seven judges (41%) identified as white, and 2 judges (13%) identified as Asian. Prosecutors were less diverse than judges; 61 percent being male and 55 percent being white.

In addition to the interview data, this analysis draws on ethnographic observations of approximately 3,000 misdemeanor cases in 10 Texas misdemeanor court jurisdictions. These jurisdictions are geographically diverse, ranging from large urban settings to small rural ones. I took detailed field notes on interactional dynamics, case outcomes, as well as system actors' and defendants' demographic characteristics, clothing, manners of speaking, and word choice, among other observable factors and processes. Finally, while the crux of the analysis is the qualitative data, I incorporate quantitative data for some important descriptive information including the amount of fines and fees collected on an annual basis.

Multiple forms and sources of data enhance the study's empirical strength by permitting triangulation. Observing and interviewing judges and prosecutors yield important insights into how they talk about courtroom processes and what they say and do in the courtroom. Interviewing defendants, in turn, represents an opportunity to explore how this rehabilitative rhetoric affects them. Similar to Stuart's (2016) work on Los Angeles' Skid Row, in which he elicited the perspectives of both the state and the people it manages, this study explores both sides of the state-citizen divide.

Interviews and field notes were coded in NVivo, using three separate sets of codes. For all interviews, I developed coding categories through an iterative process of going through interviews and pulling out relevant categories until new codes stopped appearing. The first set of codes centered on decision-makers and applies to interviews with judges, prosecutors, and defense attorneys. Extremely salient codes revolved around decision makers' perceptions and judgments of defendants, the types of sanctions and stipulations that decision-makers encouraged or imposed, and how they exercised discretionary authority. For the second set of codes centered on defendants, I paid particular attention to what was said about their experience with monetary sanctions, their experiences showing up to courts, and their participation in court-mandated programs and community service, particularly how these experiences impacted their daily lives. The third set of codes applied to the direct observation of courtrooms. Some of the most salient codes pertained, first, to interactions between courtroom actors and defendants and, second, to the punishments and requirements imposed by the courts.

Existing ethnographic work on courtroom processes has typically studied one or two specific courtroom jurisdictions (Gathings and Parrotta 2013; Kohler-Hausmann 2018; Van

Cleve 2016). While providing many important insights, it remains unclear whether the processes observed in such studies are unique to the specific research sites. Van Cleve (2016), for instance, observed an exceptionally large Chicago felony court, while Kohler-Hausmann (2018) studied New York City misdemeanor courts. The present study explores how these same processes take place in smaller cities and suburban or rural jurisdictions. It also addresses whether what happens inside the courtroom depends on the demographic makeup of the area surrounding the court. This makes Texas a particularly compelling place to investigate this variation. Texas has 254 counties of various sizes and demographic compositions. Politically, Texas has both very conservative and very liberal jurisdictions.

While representativeness may not be realistic in ethnographic work, it is generally important to prioritize internal variation (Katz 2001). One method for achieving this is what Small (2009) refers to as sequential interviewing, where one continues to add cases until reaching saturation. In other words, the researcher adds cases until they are not learning anything new. As with the interviews, the court observations did not involve any attempt to approximate the representativeness of courtrooms across the country. Yet observing various courtrooms of different sizes, in different locations, and composed of different demographics and interviewing those involved in their proceedings gives me a fuller picture than the one that currently exists.

FINDINGS

Misdemeanor courts engage in predatory rehabilitation by deploying a rehabilitative rhetoric that encourages defendants to get on the right track and become better market actors while draining them of the time and money needed to do so. Defendants are expected to prove their worth to the market by demonstrating their willingness to work and look for employment, by

pursuing degrees, and by making smart consumption choices. The following three sections offer evidence that shows how courts extract money and time from defendants lacking in both. This extraction disproportionately and materially affects low-income defendants and makes what court actors articulate as getting “on the right track” harder to accomplish.

The Rhetoric of Rehabilitation

In courtrooms all across the state of Texas, misdemeanor defendants are evaluated and lectured by judges and prosecutors. Defendants who are either summoned to court or voluntarily come to speak to the judge or prosecutor in hopes of a dismissal, an alternative sanction, or a reduced penalty see a wide variety of outcomes. Judges and prosecutors explain that the severity of the crime and the defendant’s criminal history are the biggest, but not sole factors determining outcome variability. They also discuss defendants’ consumption habits and whether or not they seem to respect authority. Courtroom decision-makers do not see what they are doing as predatory. They expressed sincere concern with promoting prosocial behavior among defendants and espoused a rhetoric of rehabilitation.

Linda¹ is a municipal court prosecutor working for a small suburb outside of a large Texas city. After observing her in court several times, we sit down for an interview. Linda is a Latina woman in her 40s and works for a private law firm that does prosecutorial work on contract, a common practice in Texas for small municipalities that do not need a full-time city attorney. Even though it is only a portion of her work, Linda takes her job as prosecutor very seriously. She sees herself as “seeking justice” and proudly states that she has never lost a trial. When I inquire about her prosecutorial discretion and how she takes individuals’

¹ All names of research subjects have been changed in accordance with IRB requirements

circumstances into account, she tells me that her goal as a prosecutor is to “make sure people are on the right track.”

While in court, I noted Linda giving a young white man charged with driving with a suspended license a break by resetting his case to give him more time to demonstrate compliance. In our interview, I recalled the case and asked her why she gave him a break and she responded:

Hopefully he'll get his GED, cause obviously, you know, he's dropped out of school. He was taking GED classes. Hopefully he will stay employed,... stay out of trouble, get his driver's license, be able to get a better job... I think those are all things also that will help him... stay on track, because I think those will help probably with his self-esteem.

Linda espoused the goals of rehabilitation. Misdemeanor justice, in this case, involves shepherding people onto the straight-and-narrow path where they can get their lives together. She stressed the importance of taking measures to improve the defendant's life, articulating a direction for rehabilitating this defendant into a more productive citizen who can better himself through education and employment.

Judge Marcos has served as a judge in a large city for 25 years. According to many people in the courtroom, he is well-liked and respected. Before we sat down for an interview, I observed him in the courtroom on several occasions. Judge Marcos lectured defendant after defendant, coming off as part therapist and part school principal scolding misbehaving children. He talks to each defendant for about three minutes, but most of these conversations followed a similar pattern. He asked the defendant whether they are working and asks follow-up questions about the job. He asks them whether they have a family and whether they are providers. In one observation, I witnessed the judge asking the defendant, "What were you

doing before this?" The defendant answered that he worked in a restaurant. Judge Marcos replied that there was nothing wrong with that because it was hard labor but still a good job.

From this interaction, it was impossible to discern the offense with which the defendant was charged, as it never came up, though this was perhaps even more telling. The primary concerns at hand were whether the defendant was working and whether he had a good job. Judge Marcos' interview reinforced these observations, as he brought up the need to get defendants paying taxes and working:

Most of the people that come before the court are amenable to some sort of direction for the purpose of redirecting what they do on a daily basis or what they don't do on a daily basis. We give people a number of opportunities to follow the court's order. First of all, it's a court order. It's a mandate. Second, is that there is the intent behind each of these orders to address the crime and... to see if we can steer people away from continuing this sort of behavior. I suppose it's a form of benign behavioral control. I very often tell a defendant; you have no talent for crime. That's not something productive, so we can get you paying taxes and paying your bills like the rest of us schlubs do.

I follow up with a question about how he can control people's behavior.

He's been outta work, I check with the employer. I send him to the Texas Workforce Commission. He has very few skills, education level is close to the floor and then we try to make adjustments there. It's not a cookie-cutter operation... But there are still the schlubs...The only thing I can really do is order them to report to the Texas Workforce Commission to get on the list. On a very, very few cases, I haven't done it very recently, I want a list of people who have gone to apply for jobs. The problem is that very often they meet with very little if any, success. The probation department, sometimes they ... have some programs where they can refer them for retraining or something like that, although those are as scarce as hen's teeth these days. We try to work with a person to get them back on track.

Judge Marcos acknowledges that success is rare, but he stops short of reflecting on the potential structural causes of these outcomes. Like Linda, he deploys a rhetoric of rehabilitation; he says that he wants people to work, and he judges them for not being productive citizens, while at the same time admitting that there are extremely limited resources to help them achieve those ends. If they fail it is because they are “schlubs” who have made poor individual choices.

Judge Walsh is a white woman in her 60s working in the county court of another large city. On the day of our interview, her capacious courtroom was unusually cold. Two bailiffs were milling about, issuing curt reprimands for behavioral infractions in the gallery, particularly to people they caught using phones. About 20 people, the vast majority of them people of color, were sitting in the audience. I observed the judge and the workings of the court for several hours and noted that, like Judge Marcos, she frequently raised questions related to defendants’ work and education statuses. A young Black man is brought out by police officers from a side door in a jumpsuit. The judge asked him why she should trust that he will be back in court if he is released on bail. The defendant assured her that he could be responsible and would come back. Judge Walsh continued: “Are you working? Are you going to school?” The defendant answered that he was actively pursuing his GED and that he was living with his mother. After this exchange, the judge laid out the conditions the defendant would need to satisfy in order to maintain the release from pre-trial detention that she was granting. This included a 10 p.m. curfew. He explained that he had no driver’s license. Judge Walsh notified him that he could not drive, then she instructed him to obtain a driver’s license and a GED. To encourage him to get his license, she says, “If my daughter can pass the test you can too.”

Through these stipulations, long before any adjudication, the judge attempted to mold the defendant into a more productive citizen. Without regard to his culpability in the offense, as if compartmentalized from the criminal case, she tried to spur the defendant into completing the GED and securing a driver's license. In our subsequent interview, inquired about these observations, to which she responded:

I wanted to talk to him and see where he is in his life and if he's on the right track or if he's right there on the cusp of doing something really bad. Just feel it out. When I talked to him and talked about getting his GED and doing those types of things. His license is not suspended. He just never got one. Maybe doing these conditions upfront, the state will dismiss your case. I can't speak for the state, but that would be something that I would recommend for this kid, if he got himself a job. Failure to identify? State would probably dismiss, you know, if he showed proof of those kinds of things.

Judge Walsh explicitly acknowledged that if the defendant was to get “on the right track”—which, in this case, translated to getting a driver's license, a GED, and a job—she would recommend that his case be dismissed. The alleged crime was failing to identify himself to a police officer. The fact that this man failed to identify himself should not be surprising given research on the criminal legal system and avoidance of the police and official institutions. Surveilled communities avoid the police whenever they can (Stuart 2016; Brayne 2014).

Judge Mathis, the presiding judge of an urban municipal court also discussed the role of school and work:

You can do, for the deferred disposition agreements, you can make whatever requirements you believe are reasonable for that type of case. Even for theft cases, I've had people do alcohol awareness classes because not necessarily that they were a thief in their hearts, but they were drinking a lot, doing stupid things, so that really gets to the heart of the problem more. Or for theft cases, for me when I was a prosecutor, I would make part of the deal, "Go get your GED," or "go get your high school

diploma," and then I wouldn't have you do any community services or other classes because oftentimes that, when you apply for a job without a high school diploma, it limits you in what jobs there are, but just getting a high school diploma opens up a whole lot more. For me, I thought that would be a reasonable requirement and give someone time to do that. There are a lot of things you can do with the deferred disposition. That, once you complete your requirements, then the case gets dismissed so you don't have any conviction on your record.

Other work has argued that mandated and even recommended classes function as an arena in which defendants must demonstrate compliance and governability (Kohler-Hausmann 2018). Mathis' comments suggest that judges are doing more than seeking compliance. They reflect a desire to change the defendant's place in society. Like Judge Walsh, Judge Mathis articulates that he wants to improve the defendant's job prospects. In neither judge's courtroom did the judge give defendants more than a few minutes to assess whether the defendant could successfully complete their GED given the time commitment it would require, nor did they inquire as to whether the defendants had any desire to do so. This demonstrates that while there is a lot of talk and discussion about rehabilitation, little is done to materially and logistically support defendants in pursuing those ends.

Court actors are also concerned with defendant consumption habits and their evaluation of worth is closely tied to their ability to act as competent market actors. Another county judge articulated this point during our interview. Judge Hudson, a white woman in her 50s working in a large urban court, described her decision-making process, specifically how she decides to give someone a break or waive someone's fees. I asked whether she might base her determination on how much income comes in versus how much goes out. She responded, "Depends. Like I said if it's because they have a great spending habit on clothes or a fancy

car? Then no.” The idea that something might have been purchased before a financial hardship does not seem to occur to her. Judge Walsh made similar judgments. She explained:

If you're 22 years old, and you don't really have a job, and you just got out of school, and you're living in a \$1600 a month apartment without a roommate, that's not you being poor. That's you making a poor decision in where you're living. I'm kind of less sympathetic to that, especially because I actually was poor at one point in my life, even as a lawyer. I lived in a tiny little apartment that didn't cost much, and it wasn't nice, and it wasn't marble countertops, but I was lucky it was in a safe part of town. [I am] just trying to figure out if people are making bad decisions with their money, or are they genuinely struggling. Genuinely struggling is obviously going to get all the help we can get, whatever reductions, whatever accommodations we can do.

Judge Walsh punishes defendants based on what she perceives to be poor market choices, whether it is living in an apartment one cannot afford, having a nice car, or having an expensive cable package—all examples she offered at different points throughout the interview. She distinguished between someone who is genuinely struggling, thus deserving leeway, and someone who makes bad market choices, thus more deserving of punishment.

This type of judgment is not limited to urban judges. Gary, a young white prosecutor working in a rural district shared a similar perspective. He explained that when someone tells him that they cannot afford to pay he talks to them and tries to get a feel for their situation. When he is talking to someone and sees them wearing designer clothes or sees them with a new iPhone, he interprets these items as signals that they can afford the fines and fees. Defendants are thus punished for demonstrating poor market-based decision-making.

The Extraction of Financial Resources

The predominant form of punishment in lower-level misdemeanor courts is the extraction of financial resources through the assessment and collection of legal financial obligations

(LFOs). Class C misdemeanor courts in Texas collected over \$1 billion in 2018, more than double the amount collected in 1995 (Office of Court Administrators 2018). All of the defendants in this study owed substantial amounts of fines and fees averaging about \$300 per person, with one defendant owing almost \$10,000. Importantly, fines and fees are often levied and collected without any conviction. Defendants frequently participate in deferral programs, which tend to cost around \$200 and serve as pre-conviction probation that allows defendants to keep the offense off of their record. Many defendants express pressure to participate in these programs even when they claim that they are innocent.

Paying hundreds and sometimes thousands of dollars to the courts has many negative effects felt disproportionately by poor populations. These include but are not limited to family strain, stress and anxiety, having to choose between competing financial obligations, selling off personal belongings, and trying to find additional ways to supplement income. Many defendants face a combination of several of these outcomes. When defendants are unable to pay they may face additional fines and fees, license suspensions, arrest warrants, and even potentially time in jail.

No defendant's situation is the same, but hearing the experiences of several defendants highlights how all of these negative outcomes can occur. Kimberly, a middle aged Black woman living in a large Texas city, has never been arrested or spent time in jail and has just one misdemeanor conviction for driving without insurance. This single conviction has followed her for over ten years. Her case reveals how costs can pile up:

It has been very stressful, and it's been a burden. Because then you have to choose between getting something maybe I really need for my kids and paying this and taking care of it to try to get it cleared and off my back. So it's been really hard. Especially when I wasn't working and didn't have resources at the time... I was just trying to

maintain, and that's why I kind of put it off for a while cause I was just really struggling. So from that particular fine, other fines came. Then it just multiplied and multiplied and multiplied. And then as soon as you pay it off, then there's something else, the conviction was put on there. So it was like, the day after I paid something, next day conviction is on there. So then there's more money involved. It's like never-ending.

She went on to explain that she has been unable to get back her license because of a reinstatement fee. From one minor offense, Kimberly has had to make difficult, stressful choices, and has seen her fines and fees grow.

Kimberly is not alone in having LFOs put a strain on her family life and childcare responsibilities. While defendants like Kimberly choose to prioritize certain responsibilities and risk further legal trouble, others take care of their fines and fees and sacrifice other responsibilities. For example, Theo, a middle-aged Latino man, has sacrificed money that was intended for baby supplies and rent in order to pay his fines. Moreover, his case forced him to take time off from work, thus cutting further into his hourly wages. Defendants often conveyed that these decisions were extremely stressful.

Responding to the pressure of legal debts, respondents developed alternative strategies for coming up with the money. This could include finding additional employment and selling off personal items. Hunter, a middle aged white woman suffering from breast cancer explained that she would try to do odd jobs and had sold off most of her jewelry to pawn shops. Between her disability and her lack of income, paying off fines and fees, or, alternatively, doing community service, presented as major challenges. Her crime was eating some packaged cheese and crackers inside of a Wal-Mart without paying for it.

Aguilar, a 29-year-old Latino man, also pawned off personal objects in addition to borrowing money from his parents. Jeremy, a 44-year-old Black man, was desperately seeking a second job to pay for the \$230 that he owed for traffic tickets at the time of our interview. He considered himself lucky because the judge in his case granted an extension on the condition that he use the time to find a job. Jules, a 31-year-old Latino man, successfully found a second job to help pay his fines and fees, bringing his total working hours per week from 40 to 65.

These cases constitute a pattern in which the lives of defendants, many of whom already experience deep financial hardship, are made more difficult by monetary sanctions. Having to pay substantial fines and fees to the court forces defendants to make difficult choices and sacrifices. Court actors expressed a desire for defendants to get on the right track, which consistently translated to becoming productive members of society, but extracting financial resources is counterproductive to that mission. The defendant respondents accounted for just a few of the millions of people all across the country, predominantly people of color, who struggle with legal debt (Harris et al. 2010; Martin et al. 2018). As Harris (2016) and others have shown empirically, there are over 10 million people who owe nearly \$50 billion due to legal fines and fees across the United States (Page and Soss 2018). This paper builds upon that work by demonstrating that this extraction contradicts the rhetoric of rehabilitation espoused by court actors.

The Extraction of Time

The extraction of time in misdemeanor courts occurs through a variety of mechanisms. The most common include court appearances, often on multiple occasions for each case; time expended waiting at the courthouse; mandated participation in community service or other

court-mandated programs; and activities related to the payment of fines, which can include second jobs and pawning off personal belongings.

Not everyone must appear in court in Texas's misdemeanor system. For minor violations, defendants with the means to pay can choose to settle the amount over the phone or online. Alternatively, a defendant can hire an attorney to come to court in their place. Both of these options assume the legal knowledge and financial means necessary to do so. For defendants that are unaware or unable to afford these options, a citation means coming to court. Most courtrooms are only open during regular business hours. This leads to the inconvenience, described by many of the defendants, of taking time off from work or securing childcare in order to show up to court, often numerous times.

I asked one defendant, Elliott, how many days he had taken off from work to go to court. He explained in detail what it was like to be told come over and over again.

On a day that I had been given a specific court date and a specific time, the clerk says, "The judge does not take these past two. Can you hang out till two?", after I had been set to be there at 8:30, and I said, "No, I took time off work because you told me to be here on this day at this time and I'm already taking time off work, and I cannot stick around for longer, and I cannot come on another day after you told me to come here on this day." So after I had showed up for my original court date, I had to go back on a different date to pick up the paperwork after the judge felt like looking at it, which was not my court date...It's been a process that's taken, I want to say, months. And within those months, constant visits to the law library and the court.

Beyond the months spent dealing with their cases, having to show up for court numerous times frequently resulted in lost wages. Due to the lack of clarity regarding the hearing process and how long it might take, some less-experienced defendants assume they can still make it to some of their workday only to end up stuck in court all day.

Sometimes defendants need to show up over and over again because they forgot a document or due to court bureaucracy. For example, Delmy, a Black woman explained:

It's like an inconvenience thing, because once you do go, you're sitting up there for hours, hours, just for them to say, "Okay, have you hired an attorney? Oh, you haven't hired an attorney? Okay. Well, we set your court date." Now you missed the whole time you took off work.

This happened hundreds of times during courtroom observations. Cases are reset with no regard to defendant time and often without any stated reason.

Courts also extract time by mandating community service and other programs like defensive driving classes. It was commonplace for respondents to characterize these classes as a waste of time. Tara, a young Hispanic woman, offered her opinion as to whether the classes were helpful:

No. The classes weren't helpful at all because every case is different and you're just shoved in with 40 other people, and then it's just assuming that you all have the same problem, but it's not.

Taylor, a young Latino man, expressed similar sentiments:

[Classes are] a fucking joke, man. It's like a group of people that all think they shouldn't be there, and a student is handling that. Like a student or something getting their hours so they can become a real counselor, you know?

Community service, while undoubtedly helping local communities and a preferred outcome to jail time, can also be a great burden for defendants already working full-time jobs, raising families, and completing their other requirements. One defendant explains, "I had to do 60 hours or something like that. It was a bunch of hours... I did three hours a week cause

I just wanted it separate. And I had to work on top... [and] I had to get my court-ordered GED, so I had a lot going on.”

The extraction of time and money goes hand in hand. When defendants cannot afford to pay, they will often do whatever it takes to avoid payment, a decision that can impact them for years. For example, James is a white, 62-year-old retiree and disabled veteran living in a small Texas city near the border with Mexico. He owes over \$1,500 in fines, all from one traffic stop. The fines are for a combination of charges ranging from no registration to expired plates. He has spent time in jail, made countless court appearances, attempted to acquire legal services, and endlessly tried to prove that his disability makes paying the fines impossible. These charges have prevented James from acquiring a driver’s license, which makes it difficult for him to get around. Spending a significant amount of time dealing with courts and being unable to drive or in financial debt makes it incredibly difficult for defendants to get their lives on the right track and become good market actors.

DISCUSSION AND CONCLUSIONS

Predatory rehabilitation is the extraction of limited financial resources and time from vulnerable populations while deploying a rehabilitative rhetoric that attempts to shape and mold defendants into productive, market-oriented citizenry. Examining the misdemeanor system through the accounts of courtroom actors and defendants and observations from a wide range of courtrooms demonstrates that misdemeanor courts engage are engaged in this extractive process. As punishment for a wide range of crimes, courtroom actors attempt to rehabilitate defendants into more productive citizens and better market actors. Judges and prosecutors encourage defendants to get on the right track both discursively, through lectures in the courtroom, and materially, by imposing court-mandated requirements to look for work

and finish degrees. Additionally, judges and prosecutors judge defendant consumption habits and offer more leeway to defendants that do not spend money on what are deemed to be luxuries. These findings demonstrate that the state is still very much involved in the lives of the poor. Although it is true that there has been a retrenchment of the welfare state, the state has not abandoned its rehabilitative functions as other scholars have argued (Simon 2007; Wacquant 2009). The burden of rehabilitation has migrated to the criminal legal system (Soss, Fording, and Schram 2011:16).

As these courtroom observations and interviews with legal defendants demonstrate, this attempt at rehabilitation is unlikely to succeed for several important reasons. At the most basic level, the stressing of rehabilitation exists for the most part on the rhetorical level (Lynch 2000). In almost every case observed, no actual resources or assistance were provided to help get people on the right track. Even when sending a defendant to the workforce commission, judges admit that it is very rarely successful. Consistent with the courtroom's large dockets, lack of trials, and disregard for individual circumstances (Feeley and Simon 1992), judges and prosecutors rarely consider what might help actually get people on the right track. For example, would additional education benefit the defendant? What life circumstances are preventing someone from finding work? None of the judges and prosecutors interviewed or observed ask this type of question. The blanket assumption is that being in the courtroom signifies that defendants have made poor choices and the threat of further punishment will push them towards better choices.

Furthermore, the attempt at rehabilitation is unlikely to succeed due to the predatory nature of both process and punishment. As this paper demonstrates, misdemeanor courtrooms extract much-needed time and money from populations that can hardly spare either.

Defendants balance a complex and wide range of financially and time-consuming responsibilities including employment, childcare, medical needs, housing needs, transportation, and other debts. Adding further financial burden and time commitments, even with the support of additional resources, makes getting on the right track extremely difficult. Without resources, rehabilitation becomes nothing more than another burden and another expense.

Along with the important finding that misdemeanor courts are engaged in predatory rehabilitation, this paper also makes important empirical and theoretical contributions. The primary form of punishment in low-level misdemeanors is the assessment and collection of LFOs. Contributing to current literature on monetary sanctions and work on the sociology of time this research finds that in addition to extracting money, misdemeanor courts extract a tremendous amount of time. Feeley (1979) demonstrated decades ago that the process of showing up and waiting is a large part of the punishment for misdemeanor violations, but this idea remains undertheorized. This paper demonstrates the ways courts extract time and how this extraction affects defendants.

Finally, misdemeanor courts are one institution in the broader landscape of neoliberalism. Market ideology is present in the courtroom, as it is present in hospitals (Lara-Millán 2014), rehabilitation facilities (Haney 1996), police stations (Stuart 2016), and welfare offices (Auyero 2012; Soss et al. 2011) Therefore, to fully understand the misdemeanor system and develop the concept of predatory rehabilitation, this paper weaves together literature on neoliberalism in state institutions with literature on monetary sanctions and the sociology of time.

The findings in this paper have important policy implications. Court practices need to be revisited with a focus on justice rather than punishing already struggling populations and without creating obstacles that make it harder for people to meet their needs and lead productive lives. Eliminating cash bail, mandating indigence hearings, eliminating or reducing fines, offering free and subsidized attorney representation, increasing court transparency and accessibility, expanding court hours and locations, increasing opportunities to handle cases online or over the phone, and offering resources to actually help people get on the right track would all go a long way to making misdemeanor rehabilitation productive rather than predatory.

Chapter 3

Disparate Surveillance: Amplifying Racial and Class Inequality in Misdemeanor Courts

A prodigious and varied body of literature maps out the racialized processes that have led to mass criminalization and the devastating impact this has had on communities of color (Alexander 2012; Beckett 1997; Tonry 1995; Western 2006). Much of this work documents the effects of felony convictions on inequality in employment prospects (Beckett and Western 2001; Pager 2003; Western 2006), health care outcomes (Schnittker and John 2007), and citizenship rights (Ewald 2002; Lerman and Weaver 2014; Manza and Uggen 2008). Even low-level forms of criminal legal contact produce significantly disparate impacts depending on a defendant's race, ethnicity, and class (Kohler-Hausmann 2013). Building on the relatively nascent literature on the misdemeanor court system, this paper examines who ends up in misdemeanor courts and how those individuals are regulated, thus articulating a previously underexamined dimension of the compound racial and class inequality that results from interaction with misdemeanor courts.

Inequality is reproduced and augmented within institutions, through multiple points of contact. Korver-Glenn (2018), for example, shows how different aspects of seeking housing – from the initial search through loan approval – can amplify racial inequality in residential segregation or home values. Other work reveals how tracking produces racial disparities in education (Lewis and Diamond 2015) and how discrimination operates at various stages of the labor market (Pager, Bonikowski, and Western 2009) In this study, I examine how different interactions within the criminal legal system contribute to inequality in punishment outcomes and I consider how, collectively, they aggravate the disparities found at each stage of criminal legal processing.

For higher-status individuals, the relatively restrained level of surveillance in their communities diminishes their risk of law enforcement contact and arrest for misdemeanor offenses. Conversely, high-intensity police surveillance in poor and minority neighborhoods means residents are at greater risk of being arrested or receiving a citation (Crutchfield et al 2012). This is evident in the demographic makeup of every courtroom that I observed. In both majority white and majority non-white jurisdictions, courtrooms are filled with defendants of color. Although it is impossible to definitively ascertain the class status of defendants during courtroom observations, interviews with judges, prosecutors, defense attorneys, and defendants strongly suggest that most of the people whose cases comprise misdemeanor court dockets have few economic resources to manage their legal obligations. Punishment is aggravated by poor defendants' inability to pay fines and fees, and by burdens resulting from system involvement, like having to miss work for numerous court appearances, struggles with childcare, and various other opportunity costs.

Because poorer and minority defendants are more likely to end up in court, they are more likely to interact with the court and be subjects of its regulation inside the courtroom. This regulation includes punishment for inappropriate courtroom behavior, lack of cultural knowledge in interacting with courtroom actors and not being trusted. Existing work on compound inequality in the criminal legal system has looked at official stages of processing. For example, scholars have examined how racial inequities in charging, plea deals, and sentencing fuel cumulative disadvantage (Kurlychek and Johnson 2019; Kutateladze et al. 2014; Kutateladze and Lawson 2018; Stolzenberg, D'Alessio, and Eitle 2013; Wu 2016). This work typically concentrates on felony-level decision-making and the official processing of charging, plea bargaining, and sentencing. Less attention has been paid to the unofficial

courtroom norms and dynamics and the mundane ways that inequality can build through criminal processing, for example, through court officials' policing of defendants' behavior, demeanor, and clothing.

Weaving together theoretical insights from the literature on criminal legal processing, compound racial inequality, and racial and class-based discrimination in the courtroom, I demonstrate how the misdemeanor court system amplifies inequality. Compared to their more privileged, affluent, and white counterparts, the poor and people of color are more likely to end up in court. Once there, they tend to be more acutely affected by the extraction of time and money, are more stringently punished for inappropriate behavior, and are regarded with greater suspicion by judges and prosecutors. To clarify these dynamics in a manner distinct from prior research on misdemeanor courts, which focuses almost exclusively on disadvantaged-status individuals, this study contrasts the experiences of poor and minority defendants with those of the relatively few wealthy and privileged defendants that make their way through the system.

Based on ethnographic observation of approximately 3,000 misdemeanor cases across a diverse set of misdemeanor jurisdictions in the state of Texas and interviews with 62 defendants, 17 judges, and 18 prosecutors, and 16 defense attorneys, this study examines whether and how racial and class inequality in punishment is compounded through processes of criminal legal involvement in the misdemeanor legal system. Defendants from poor disadvantaged communities face more surveillance and are more likely to end up in court for similar offenses, even in majority-white communities (Crutchfield et al. 2009; Rios 2011; Stuart 2016). Courtrooms are filled with poor and non-white defendants who are forced to interact with and be part of the regulatory regime of the courts. Processes at various stages of

the misdemeanor legal system amplify inequality at various points leading to class and racial inequality.

THEORETICAL BACKGROUND

A Two-Tiered System of Justice

Inequality is produced at every level of interaction of the criminal legal system and these inequalities are amplified over the course of interactions. Numerous institutions within the criminal legal system systematically disadvantage people who are poor and people of color. Historically, the criminal legal system's growth criminalized the urban working class and incarceration is, therefore, a mechanism for punishing and controlling the poor (Fitzpatrick and Myrston 2011; Irwin 1985; Tillotson and Colanese 2017). This process has coincided with the retrenchment of the welfare state (De Giorgi 2017; Soss, Fording, and Schram 2011; Wacquant 2009; Western 2006). Evidence strongly demonstrates that involvement in the criminal legal system affects the poor and people of color at vastly disproportionate rates (Kirk and Wakefield 2018; Pettit and Western 2004; Wakefield and Uggen 2010).

Existing literature has demonstrated that poor and non-white defendants are more likely to end up in the courtroom in the first place due to increased surveillance (Crutchfield et al. 2009; Fagan et al. 2016; Rios 2011) and excessive policing for so-called quality of life transgressions (Fagan et al. 2010; Gelman, Kiss, and Fagan 2006) which has led to a policing system where members of minoritized groups are stopped more often than whites in comparison to the overall population and to estimated rates of crimes they have committed. Police stops of people who are Black or Latino/a are less likely to lead to arrest, consistent with arguments that emphasize racial and ethnic discrimination in pretextual stops. Black people are at greater risk of encounters with police (Brunson and Weitzer 2009) even when

accounting the size of patrols in the area (Beckett, Nyrop, and Pflingst 2006). We also know that Black youth in white neighborhoods have a higher likelihood of having adverse interactions with police officers (Stewart et al. 2009).

Because of this increased surveillance, Black and poor populations are more likely to be punished by the misdemeanor legal system. Once a citation is received, people need to navigate the misdemeanor court system. The most common form of punishment in misdemeanor courts is the use of monetary sanctions, also known as Legal Financial Obligations (LFOs). Katzenstein and Waller describe monetary sanctions as an inverted welfare system that “taxes poor families to help fund the state’s project of poverty governance” (2015:639). LFOs therefore exacerbate socioeconomic inequality. Poor people convicted or charged with crimes pay for their own punishment (Harris 2016). The assessment and collection of monetary sanctions is racialized as well. Counties with higher levels of Black and Latino populations collect more fines and fees per capita from their populations (Slavinski and Pettit 2021).

Fines and fees also distinctively disadvantage the poor through excessive time burdens. Low-income and indigent defendants’ inability to settle their financial obligations can result in protracted involvement in the system (Slavinski and Spencer-Suarez 2021). Whereas people with comfortable incomes might be able to pay their fines and fees forthwith and move on with their lives, courts often require that defendants with outstanding LFOs appear for multiple compliance hearings or sign up for lengthy payment plans, which may then accrue interest. They can also be detained and possibly incarcerated following the issuance of warrants for nonpayment.

Time and waiting also play a vital role in many criminal legal contacts (Slavinski and Spencer Suarez 2021). Visiting incarcerated relatives and loved ones entails invasive and time-consuming security measures and includes substantial time spent waiting (Comfort 2009). Incarceration involves prolonged periods of waiting as well. Incarcerated populations wait for their hearings, wait to be able to use the phone, and wait for their release. (Cohen and Taylor 1972; Irwin 1985). Likewise, time burdens and constraints are important in the misdemeanor context. Cases require many court appearances, with potentially critical consequences (Feeley 1979). Work by Kohler-Hausmann (2018) depicts the disproportionate amount of time taken up by compliance procedures. The weights of waiting experienced by the working classes extends beyond the criminal legal system. All of this waiting creates severe hurdles and strain for working class communities, as seen in work on welfare systems and eviction (Auyero 2012; Piven and Cloward 1971; Redko, Rapp, and Carlson 2006; Sullivan 2018).

The two-tiered nature of criminal procedure and punishment, wherein people on opposite ends of the socioeconomic spectrum experience vastly different outcomes, manifests in the misdemeanor system just as it does in the handling of felony cases. For indigent defendants, LFOs can result in serious and escalating consequences (Harris 2016; Martin et al. 2018). Those who cannot pay fines and fees may face driver's license suspensions, ruined credit, parole revocation or probation extension, and compromised access to housing, employment, public benefits, and voting rights (Bannon, Nagrecha, and Diller 2010). For segments of the population with ample resources, time, and institutional knowledge, monetary sanctions may prove a temporary nuisance. Moreover, those with means are better equipped to contest criminal charges before any LFOs are imposed. They can retain private counsel,

thus potentially increasing the likelihood of favorable case outcomes. Low-income communities of color face inability to pay, difficult choices among conflicting obligations, and arduous time requirements, all of which compound to make navigating misdemeanor courts harder on the lives of the poor.

Amplifying Inequality and Courtroom Dynamics

In addition to influencing who ends up in court and the unequal effects of financial and time extraction, inequality can be amplified through interactional processes that occur inside the courtroom. Work on labor markets, education, and housing (Korver-Glenn 2018; Lewis and Diamond 2015; Pager 2003; Pager et al. 2009) show how inequality is not reproduced solely at one level of interaction with institutions or decision-makers but across them. In a process known as cumulative disadvantage, relatively minor inequalities can build over time and through continuous interactions with institutions (Kurlychek and Johnson 2019). Inequalities are embedded with a historic racialized social structure (Reskin 2012). While Blackness is penalized, whiteness is rewarded with preferential housing choices (Roscigno, Karafin, and Tester 2009; Ross and Turner 2005; Rugh and Massey 2010), better employment prospects (Pager 2003; Pedulla and Pager 2019; Quillian, Lee, and Oliver 2020), and lower interest rates and higher credit limits (Dwyer 2018; Krippner 2017).

As in a myriad of other institutional contexts, social and economic inequities play a central role in criminal court dynamics. Individual case incongruences are often affected by other case and defendant characteristics (Kurlycheck and Johnson 2019). Those inequalities are also built directly into legal structures and result in potentially discriminatory effects. These effects can cross over various jurisdictions and over time.

Therefore, decisions about who should be punished, and to what extent, are the result of a multifaceted process of gathering information related to past experiences and stereotypes based on race, class, and potential criminal involvement, the effects of which compound over time (Albonetti 1986; Bridges and Steen 1998). Earlier decisions also serve as cues to future decision-makers. This process is bound up in power relations and scholars have argued that legal decision-making unfairly and systematically disadvantages lower social classes (Chambliss and Seidman 1971; Chiricos and Delone 1992; Jankovic 1977). For example, if someone receives a citation and subsequently appears for a hearing, the courtroom will often treat them as guilty. If the police officer took the time to write the citation, the defendant is in the courtroom, and they match racial and class-based stereotypes on who tends to commit crimes, these processes and stereotypes can cue judges and prosecutors to assume guilt and treat the defendant accordingly.

Research indicates that young Black and Latino males often receive the harshest treatment of all defendants (Steffensmeier et al. 1998, US Sentencing Comm. 2017), particularly when they are unemployed (Spohn & Holleran 2000). Ample evidence exists for unequal charging outcomes and less favorable plea deals (Kurlychek and Johnson 2019; Kutateladze et al. 2014; Kutateladze and Lawson 2018; Wu 2016), which, along with a higher likelihood of receiving mandatory minimums, add up to substantial punishment disparities (Rehavi and Starr 2012; Steffensmeier and Demuth 2000). Several scholars have used probabilistic methods to evaluate the mounting effects of unequal treatment throughout the stages of pre-trial detention, plea bargaining, and sentencing (Kutateladze et al. 2014; Sutton 2013), finding that Black and Latino defendants not only face significant disadvantages

compared to whites but that those disadvantages are magnified at each subsequent point of criminal legal contact.

While courts rarely exhibit overt racial bias, “colorblind” institutionalized practices and norms can perpetuate racially unequal outcomes through implicit reliance on racial stereotypes (Bonilla-Silva 2006; Lewis and Diamond 2015; Lopez 2000). Qualitative scholarship illustrates subtle forms of racial biases on the part of court actors (Bridges and Steen 1998). Recent work explores how court actors invoke racial stereotypes when conveying perceptions of Black and Latino defendants’ immortality and unworthiness (Van Cleve 2016). Furthermore, studies of judicial behaviors and attitudes regarding race find that while many judges acknowledge racial discrepancies, very few actively seek to mitigate them (Clair and Winter 2016).

Interactions between defendants and their attorneys are yet another site of the perpetuation of racial and class inequities. Clair (2020) finds that, for the disadvantaged, a relationship with defense counsel often results in coercion, silencing, and punishment, while wealthy clients tend to navigate relations with attorneys with relative ease. This is at least partly due to the greater degree of leverage a defendant has when hiring private, rather than receiving assigned, counsel. In misdemeanor courts, this dynamic is further exacerbated because there may not be a guarantee of legal representation.

Racial dynamics also manifest in defendant testimony and self-advocacy, as witnesses of color are less often believed than white witnesses (Pager 2005). According to legal scholar Amanda Carlin, this happens because courtrooms have historically been a white space where communities of color have been excluded from the development of legal rhetoric and conceptions of persuasiveness. “People of color are forced to conform their behavior inside

the courtroom in order to gain legal recognition. When people of color are unable or unwilling to conform to the constructed legal notions of narrative truth, they [render] them untrustworthy” (Carlin 2016:464). Prosecutors and judges make quick judgments on how trustworthy someone is, and this judgment can affect everything from fine amounts someone is ordered to pay to and whether a case is dismissed. For example, defendants explain whether they are able to pay their fines and fees and they explain why they did or did not commit the offense. Being believed can lead to reduced fine amounts, extensions, alternatives to payment, and sometimes even dismissals. If a defendant is suspected of lying, they will not receive any of these advantages and sometimes punishment is even enhanced.

DATA AND METHODS

In order to investigate how race and class inequalities are amplified through the stages of misdemeanor legal contact, I draw on data from two years of qualitative fieldwork in the state of Texas in 10 misdemeanor jurisdictions, a state that regularly handles over 7 million misdemeanor cases a year (Slayton 2014). As part of a team of researchers (Harris et al 2017), I contributed to the collection of ethnographic observations of approximately 3,000 misdemeanor cases in 10 misdemeanor court jurisdictions. Research sites were selected for heterogeneity in geographic location and population density; hence they range from large urban settings to small, rural municipalities. While carrying out court observations, team members took detailed field notes on interactional dynamics, case outcomes, as well as system actors’ and defendants’ demographic characteristics, clothing, manners of speaking, and word choice, among other observable factors and processes.

To examine the perspectives of individual courtroom participants, I also draw on interviews the research team conducted with 62 court defendants, 17 judges, 18 prosecutors,

and 16 defense attorneys. Interview recruitment involved a collection of strategies. To attract prospective defendant participants, recruited participants outside of courtrooms, we posted flyers outside criminal courts, and built partnerships with gatekeepers. By and large, the defendants were low-income. About 39% of interviewees identified as Black, while 36% identified as white (36%), and 33% identified as Latino or Hispanic. About half were under the age of 30. Judges and prosecutors were recruited in-person, while conducting fieldwork in the courts. We took advantage of breaks and lulls in hearings and moments at the end of court sessions to approach court actors and ask to speak to them. Demographics varied widely by region. Overall judges were about three-quarters (76%) male. All of the female judges interviewed were in large urban cities. Eight (53%) judges identified as Latino or Hispanic, seven judges (41%) identified as white, and 2 judges (13%) identified as Asian. Prosecutors were less diverse than judges; 61 percent being male and 55 percent being white.

Field notes and interviews were coded in NVivo, using three separate sets of codes. For all interviews, research teams in Texas and seven other states (Harris et al. 2017) collaboratively developed coding categories through an iterative process that involved going through interviews and pulling out relevant categories until new codes stopped appearing. The first set of codes centered on decision-makers and applies to interviews with judges, prosecutors, and defense attorneys. Extremely salient codes revolved around decision-makers' perceptions and judgments of defendants, the types of sanctions and stipulations that decision-makers encouraged or imposed, and how they exercised discretionary authority. For the second set of codes centered on defendants, team members paid particular attention to what was said about their experience with monetary sanctions, their experiences showing up to courts, and their participation in court-mandated programs and community service,

particularly how these experiences impacted their daily lives. The third set of codes applied to the direct observation of courtrooms. Some of the most salient codes pertained, first, to interactions between courtroom actors and defendants and, second, to the punishments and requirements imposed by the courts.

Existing ethnographic work on courtroom processes has typically studied one or two specific courtroom jurisdictions (e.g., Gathings and Parrotta 2013; Kohler-Hausmann 2018; Van Cleve 2016). While providing many important insights, it remains unclear whether the processes observed in such studies are unique to the specific research sites. Van Cleve (2016), for instance, observed an exceptionally large Chicago felony court, while Kohler-Hausmann (2018) studied New York City misdemeanor courts. The present study explores how the same processes take place across an array of distinct jurisdictions, including cities both large and small, as well as suburban and rural settings. It also addresses whether what happens inside the courtroom varies based upon the demographic makeup of the area surrounding the court. Texas has 254 counties of various sizes and demographic compositions. Politically, Texas has both very conservative and very liberal jurisdictions. Thus, it presents an especially compelling place to investigate whether variation in procedural and interactional dynamics appear to hinge on jurisdictional demographics.

Regarding the validity of findings, internal variation constitutes an important aspect of ethnographic work (Katz 2001). One method for achieving this is what Small (2009) refers to as sequential interviewing, where one continues to add cases until reaching saturation. In other words, the researcher adds cases until they are not learning anything new. Consistent with qualitative methodologies in general, our data collection process involved no attempt to approximate the representativeness of courtrooms across the country. However, observing

various courtrooms of different sizes, in different locations, and composed of different demographics, and interviewing those involved in their proceedings, allows for a more complex and expansive examination of misdemeanor courts than the literature has previously afforded.

FINDINGS

Stage 1: Surveillance and Getting Summoned to Court

In courtroom after courtroom, the lines waiting to get inside, the people sitting in the gallery, the defendants talking to judges and prosecutors, the demographics were consistent. This pattern was continued in large and urban, medium and suburban, and small and rural courtrooms. Even in wealthy and white jurisdiction, the majority of people in the courtroom were Black and Brown. In almost all of the defendant interviews, participants reported incomes below the poverty level. Conversations with several defense attorneys and prosecutors offered some insights that helped explain these observations. Consistent with the literature on traffic stops, court actors describe a disproportionate number of clients of color and poor clients.

A defense attorney in a large urban jurisdiction explains, “Most of my clients, particularly with traffic tickets, are men of color in the age range of 25-45. That’s not to say I don’t have clients outside of that, but there’s a disproportionate number of young men who are being pulled over and ending up in this situation.” This is the stage where compound inequality begins. Poor, people of color are more likely to be ticketed and cited. When I ask why this seems to happen even in whiter and wealthier jurisdictions, he explains “If you’re a person of color in the wrong neighborhood driving the wrong kind of car, you’re going to get stopped.”

Another defense attorney who works in a majority-white suburban jurisdiction tells me that, “Oh, yeah. I mean, I have very few white clients, as well, I'd say, compared to the population here.” While many judges and prosecutors claim that there are no demographic patterns in the courtroom, others recognize that this is not the case. In a response broadly representative of prosecutor interviewees, one participant in a suburban jurisdiction states, “I would say it's a good mix in age and race. I've never walked in and thought, ‘Wow, there's one type of person in here.’ It's always been adults and younger, and Black, white, Hispanic, nothing's every stood out in that way. So yeah.” The prosecutors who do recognize this pattern typically explain it in different terms. One prosecutor practicing in a large urban jurisdiction explains why he thinks there are more poor people and people of color in the courtroom: “When it comes to race, that's a touchy subject. You do have a lot more people who are disadvantaged groups, Black people, not as wealthy demographically. Less wealthy people tend to commit ... tend to be more involved in the criminal legal system. I don't wanna sound racist or anything, it's just ... just facts.”

One prosecutor in a predominantly white suburb, and who was also a judge in a larger urban district, was the only prosecutor interviewee who recognized the role of unequal surveillance. He explains that police officers have a mandate to target older cars for offenses like expired registrations and broken turn signals. This simultaneously raises revenue for the town and sends a message to poor people and people of color that they are not welcome in the rich, white suburbs.

Stage 2: Who Ends Up in Court

Apart from who gets summoned to the court, there are additional reasons why courts are filled with defendants from marginalized communities. For many lower-level misdemeanor

offenses, defendants who can afford to pay the fine, have internet access, and have the requisite knowledge, can take care of everything online or over the phone. Class C misdemeanors in Texas can be satisfied by simply paying a fine. For people who cannot afford to pay, or who want to contest their tickets, going to court can compound punishment. Marie, a young Latina woman, faced these challenges after being charged with driving without registration and speeding. Because she could not pay the \$1,000 and was unaware of alternatives, she was in court on multiple days trying to deal with her case. She explained that trying to resolve her case had taken months.

On a day that I had been given a specific court date and a specific time, the clerk says, "The judge does not take these past two. Can you hang out till two?", after I had been set to be there at 8:30, and I said, "No, I took time off work because you told me to be here on this day at this time and I'm already taking time off work, and I cannot stick around for longer, and I cannot come on another day after you told me to come here on this day." So, after I had showed up for my original court date, I had to go back on a different date to pick up the paperwork after the judge felt like looking at it, which was not my court date...It's been a process that's taken, I want to say months. And within those months, constant visits to the law library and the court.

During interviews, many other defendants also described repeated court appearances and meeting with various judges and prosecutors to try to either prove their innocence or to convince the court that they could not afford their fines and fees..

Even for cases that were more complicated than just paying online, wealthier defendants could simply hire an attorney to take care of everything for them. For example, Julian, a young Latino man, was dealing with several citations in different jurisdictions. He was on probation for possession of marijuana with intent to distribute. Despite his multi-jurisdictional entanglements, his misdemeanor offenses posed a minor inconvenience. He explains: "Well, with those tickets, they weren't difficult at all. I always hired one of those

lawyers that you just give 50 bucks to and then they go to court for you... It always got settled. Either defensive driving or it would just be settled by the lawyer. I guess they worked their magic, or whatever.”

The only time I witnessed a rich, white defendant showing up to court on more than one occasion was by choice and to make a point. Taylor, a 42-year-old white male doctor, parked illegally in a space reserved for people with disabilities and was charged with a \$500 ticket, a Class C Misdemeanor in Texas. Taylor doggedly disputed the charge because, in his opinion, the spot was not properly marked. He spent thousands of dollars on attorneys and showed up to court over and over again to fight the case. “It’s now not about the money, it’s about the principle,” he asserted. Unlike most misdemeanor defendants, Taylor was in the courtroom and dealing with the misdemeanor system because he had the money and resources to fight for what he believed was right.

Taken together, unequal exposure to policing and surveillance combines with requirements that allow wealthier defendants to opt-out greatly affects the makeup of the courtroom and makes misdemeanors a more difficult and drawn-out process for marginalized communities. Wealthier defendants are less likely to face surveillance and less likely to be cited. When they are cited, they are less likely to have to come to court. On the other hand, poor people and people of color face more surveillance, are more likely to be summoned to court, are less likely to be able to take care of the problem without showing up to court, and once in the court are more likely to have to come back.

Stage 3: In the Courtroom

Defendants who come to court interact with the misdemeanor court system in myriad ways, all of which are subject to unequal power relations. Upon entering the courthouse, defendants

are instructed to line up single file to await searches and pat-downs by security guards. Next, they are subject to a vast array of rules governing the minutiae of comportment and physical presentation, many of which are enforced unequally. Defendants who are unfamiliar with the rules and norms of the courtroom swiftly encounter harsh regulation by court staff. They may be kicked out of the courtroom for using their cellphones, having unruly children, falling asleep, or wearing “inappropriate” clothing. That phones might be needed for work or family emergencies, childcare might be impossible to obtain, or defendants might not even own “proper” courtroom attire are conditions seldom considered by those charged with enforcing the court’s standards of propriety. Prohibited attire, for instance, often includes baggy and loose-fitting clothing, suggesting that “appropriateness” is racially coded. Meanwhile, attorneys and court personnel are exempted from certain rules that are heavily enforced among defendants, like cell phone use and talking during proceedings.

The ability to communicate and act in ways that the court deems acceptable played an important role during observed hearings. Judges were seen reprimanding defendants for stuttering, not saying “yes, sir” or “ma’am,” speaking too softly, and for not being sufficiently polite and deferential. Some judges were visibly annoyed when the defendants did not speak English fluently. One older, white male judge in a large urban jurisdiction was particularly antagonistic toward non-English speaking defendants, threatening to have them deported. He also strongly discouraged anyone from using a court-appointed attorney.

When the judge finds out that the defendant is undocumented, he says he can deport him if he wants and says he wants to take advantage of our great country. He starts to go on a monologue about immigration and Mexico. When the defendant says that he wants a lawyer, the judge says you aren’t a citizen, but you want taxpayer money to go to you. Continues by saying “I’ll tell Mexico about you they’ll probably send you a postcard”...Keeps giving him a hard time. Asks him if he has any

dependents. Defendant replies that he has wife and kids in Mexico. The judge cuts him off and yells that he doesn't care about Mexico.

Most jurisdictions in Texas do not provide public counsel in misdemeanor cases. Many defendants end up trying to advocate on their own behalf, speaking directly to judges and prosecutors. Ability to communicate effectively and in a way that the court deems appropriate and acceptable becomes crucial. An interview with a defense attorney from a large urban district validated these observations:

So, like, thinking about JP (Justice of the Peace) and traffic tickets and stuff. If you don't have an attorney, you're going to be talking to the prosecutor directly yourself about the case, so then it depends very much on how the prosecutor feels about you and how well you can communicate, whatever it is that you need to communicate in a way that the prosecutor is going to be receptive to... Communication is racialized. It's gendered. It's based on class. So, somebody that's middle class with a college education and a lot of patience and social skills are gonna be able to communicate in a way that the prosecutor's gonna be more receptive to than somebody who's doesn't speak English as a first language or has different social-emotional skills or maybe has some mental health problem that impacts how they communicate and act. So, I think that definitely plays a part in it.

Another defense attorney from a different urban jurisdiction also touched on the importance of appearance and how it intersected with race and class. Defendants that play into their own racial stereotypes are punished, despite the fact that it takes money to appear differently:

You show up with saggy pants, whatnot, they're gonna get hammered. If you show up looking like you belong in the Young Republicans, you're not gonna get hammered... You show up looking kind of not right, you know dressed provocatively, you're gonna get hammered. Black guys if they show up with the droopy thing, they're

gonna get hammered. Mexicans if they show up looking like thugs, gonna get hammered. You've gotta look somewhat conservative and you're not gonna get hammered. But you gotta think about who can afford to dress that way, then it goes back to the entire money issue.

While most judges and prosecutors deny differences in treatment, others are keenly aware that discrepancies exist. One judge explained that in spite of his efforts, racism is alive and well in the courtroom. When I asked him for examples, he said he notices it most often when he sees white, male wealthy clients with white, male prosecutors getting better outcomes and leveraging their ability to pay to avoid harsher penalties. He contrasted this pattern with the typical experiences of Latino, working-class defendants.

Relatedly, the court tends to regard privileged defendants as more trustworthy than those belonging to marginalized groups. In one suburban courtroom in Central Texas, I sat with the prosecutor on several occasions, watching her interact with defendants, most of whom had no attorney representation. At one point, a Latino male in his forties walked in. He had dark hair and eyes, with a short haircut. His charge was for cutting through a parking lot. We watched on video as his car drove through a parking lot without stopping. He explained that he was trying to go to a restaurant, but it was closed so he drove past it. She asks him to explain again. He explains that he was on his way to work and wanted to stop for breakfast and he had seen the place before. When he got close to it, it didn't look good, so he decided not to go, and he drove past it. She didn't believe him and accused him of lying. After some back and forth he took a \$150 deferral and left, visibly frustrated and upset. She told me "people lie to me every day." I came back the next week, and an Asian man in a nice suit holding a briefcase came in with his son. He was also charged with going through the same

parking lot. He explained that he usually took his son to eat something after school but once they were in the lot the son explained that they had a pizza party at school, and he had already eaten. She dismissed the case and made no indication that he might be lying.

Suspicious about whether defendants were telling the truth often came up in ability-to-pay determinations. During observations, many judges and prosecutors appeared dubious when defendants claimed indigency. One judge in an urban courtroom explains that she is often skeptical about defendants' financial situations.

Based upon their educational background, earning potential, whether they're driving a brand-new car. If you look on their information and they're driving a 2018 Ford F150, you're kinda like, you know. It's like ... It's difficult because you see people dressed to the nines, but you don't know where they got their clothes, and you don't know whether their jewelry's really gold. For a lot of females, judges will look and see are they getting manicures. Do they have really expensive ... There are women that spend 50 bucks a week on their fingernails okay and so, I try not to think about that, but people will say things about that. You'll go, "Well, you know what, you can't get a manicure. You're gonna have to go without your manicure and pay your court costs instead."

Subjective assessments of a defendant's "bad attitude" may cause a judge to question whether that individual is to be believed at all. A different judge in the same jurisdiction expresses a similar view: "Oh, just their attitude about the whole situation. Just the way they're carrying themselves or talking to me about it, or they're shy about it, things like that. That's a good way of figuring out are they being truthful or do I need to ask more questions."

Whether a defendant is dressed "appropriately," has the ability to communicate effectively, behaves properly in the courtroom, and is subjectively perceived as honest are all points in the processing of misdemeanor cases that frequently reproduce inequities. Alongside the fact that non-white and poor defendants are more likely to end up in the courtroom in the

first place, it is evident that the misdemeanor system is ripe with the potential to amplify inequality and worsen outcomes for lower-status defendants.

DISCUSSION AND CONCLUSION

Drawing on ethnographic observations and interviews, this paper provides an in-depth examination of class and racial inequality in the misdemeanor court system, illuminating the ways in which inequality is amplified through three specific stages of navigating the misdemeanor court system. Building upon work on compound inequality in the housing market (Korver-Glenn 2018), tracking in the education system, (Lewis and Diamond 2015), and compound discrimination in the labor market (Pager, Bonikowski, and Western 2009), I demonstrate that the misdemeanor system amplifies inequality through processes that affect 1) who is summoned to court 2) who actually ends up in court and 3) how defendants are treated inside the courtroom.

Greater surveillance of poor and minority communities leads to a greater likelihood that individuals living in those communities will end up summoned to court. At the next stage, wealthier defendants are able to avoid coming to court by satisfying their penalties online, over the phone, or through the acquisition of a private attorney. For defendants unable to pay and unable to hire an attorney, appearing in court become necessary. Finally, once inside the courtroom, poor and minority defendants can be further punished by failing to display behavior the court deems appropriate and failing to wear proper attire. Additionally, prosecutors and judges decide whether defendants are trustworthy, and this judgment can further exacerbate inequality by leading to less favorable outcomes for defendants that are not believed.

These findings have important implications for the literature on compound racial and class inequality and disparities in the criminal legal system. I demonstrate that it is important to examine the unofficial mechanisms and processes that can lead to unequal criminal legal outcomes. Previous scholars have concentrated on official stages of criminal legal processing, for example, charging, plea bargaining, and sentencing. While these stages also play an important role in the misdemeanor court system, courtroom norms and interactional dynamics are also vital mechanisms for producing inequality. Knowing what to wear, how to talk to court personnel, and the ability to show “respect,” can improve case outcomes. Because courtrooms are historically white spaces and defendants in the courtroom are disproportionately people of color and poor, whiteness, wealth, and higher status are rewarded while Blackness and poverty are punished. Future work that measures inequality in criminal legal outcomes should pay particular attention to the ways in which interactional dynamics that happen outside and between official legal channels can amplify inequality.

Chapter 4

“A Sketchy Business”: Misdemeanor Courts as Sites of Political Socialization

The incarceration experience has deep and multifarious effects on those who serve time, one aspect of which is a shift in voting patterns and political attitudes (Lee, Porter, and Comfort 2014; Manza and Uggen 2008). After their release, formerly incarcerated individuals face long-lasting collateral consequences, like restrictions on housing, occupational and recreational licenses, and public benefits, as well as the loss of citizenship rights through disenfranchisement. A sizable body of research demonstrates the effects of felony convictions and imprisonment on employment prospects (Beckett and Western 2001; Pager 2003; Western 2006), health care outcomes (Massoglia 2008; Schnittker and John 2007; Turney, Wildeman, and Schnittker 2012), and family relationships (Comfort 2009; Lee et al. 2014). Moreover, the literature explicates the racialized processes that have led to mass incarceration and their devastating impact on communities of color (Alexander 2012; Beckett 1997; Pettit and Western 2004; Tonry 1995; Western 2006). Existing work yields many important contributions, but it is limited in its ability to explain how criminal legal entanglements interact with and affect the political socialization of the millions of people who pass through the system without felony convictions.

Recent scholarship has started to take a more expansive look at the ramifications of criminal legal interactions outside of prison walls. For instance, work on probation shows how community supervision leads to “net-widening” by drawing in more low-level cases among defendants who might otherwise receive sentences of community service hours, fines, or other less invasive punishments, and who, through increased restrictions and monitoring, are rendered more likely to be incarcerated in the future (Phelps 2013, 2017, 2020).

Researchers have also looked beyond the prison to examine alternative incapacitating facilities and their damaging effects (Haney 2010; Waldram 2012; Weissman 2009) More recently, work on legal financial obligations demonstrates the inequitable burdens of fines, fees, and other financial sanctions imposed on the poor and people of color (Friedman and Pattillo 2019; Harris 2016; Harris, Evans, and Beckett 2011; Shannon et al. 2020; Slavinski and Pettit 2021; Slavinski and Spencer-Suarez 2021).

These interactions can dramatically affect how people engage with state institutions, see themselves as citizens, and participate in democracy and other government institutions (Bell 2016; Brayne 2014; Ewald 2002; Goffman 2015; Lerman and Weaver 2014; Manza and Uggen 2008). According to Lerman and Weaver, criminal legal institutions have come to play a socializing role in the lives of a substantial subset of Americans, fundamentally altering how they come to conceptualize the democratic state and their place within it. These socializing experiences shape the ways in which people apprehend the political world they inhabit, how they perceive and seek to make claims with government entities, and how they understand their political standing.

This article builds upon and expands the literature by exploring a key paradox present in the world of misdemeanor courts. State actors, particularly judges and prosecutors, encourage defendants to be productive and active citizens, all the while their own institutional roles entail facilitating predatory and extractive practices that drain defendants of resources and time. These interactions then frame defendants' conceptualizations of "the state," "democracy," and their relationships to them. By focusing on one specific realm of the criminal legal system, the misdemeanor courtroom, and interrogating both sides of the state-citizen divide, the current study deepens our understanding of the specific processes that

socialize people involved in criminal legal institutions and affect their perceptions of themselves as citizens and participants in the democratic process.

Based on ethnographic observations of approximately 3,000 misdemeanor cases across a diverse set of misdemeanor jurisdictions in the state of Texas and interviews with 62 defendants, 17 judges, and 18 prosecutors, I examine how the misdemeanor court system shapes the political identities of its subjects—individuals who disproportionately belong to socially and economically vulnerable groups. Findings show that courts encourage defendants to be productive, involved citizens while simultaneously exhibiting distrust of defendants and carrying out predatory practices. Extraction of defendants’ often-scarce time and resources feeds into a dynamic of conflict. The end result is a deep sense of estrangement towards the state and government institutions. Defendants describe the political process in cynical terms and the vast majority do not vote. Yet quite revealingly, many defendants remain active and engaged in their communities through direct avenues of solidarity outside of traditional government institutions. The current study explores the processes and dynamics that lead defendants to an adversarial perspective, which in turn removes citizens from official political engagement but not from community participation.

Interview data illuminate the ways in which defendants interpret the state and its institutions as being out to get them, taking away their already limited resources, and wasting their time. Judges and prosecutors, who on one hand urge rehabilitation and active participation in the labor market, perpetuate an oppositional relationship by making onerous demands on defendants’ time and money. Court observations provide insights into how the processes of navigating misdemeanor courts, which includes repeated court appearances, being obliged to continually demonstrate one’s worth and manageability, and dehumanizing

experiences in the courtroom, feeds into defendant conceptions of the state as the enemy. Results have important implications for contemporary debates about legal cynicism, disenfranchisement, citizenship rights, and criminal legal reform.

THEORETICAL BACKGROUND

State Interaction and Citizenship

Citizens' interactions with the state and criminal legal institutions play a crucial role in shaping individual values, norms, and perceptions. Michael Lipsky argues that interactions with representatives of the government "socialize citizens to expectations of government service and a place in the political community . . . in a sense street-level bureaucrats implicitly mediate aspects of the constitutional relationship of citizens to the state" (1983:4). It is largely through direct contact that citizens learn about their government, its functions, priorities, and the ways in which that government sees their place in it (Lerman and Weaver 2014). These points of contact inform individuals of their political standing and their rights and responsibilities as citizens (Landy, Ingram, and Smith 1993). Positive experiences with the state can teach people that their voices matter, they are worthy of respect, and the government works for them (Marshall 1950; Mettler 2005; Soss, Fording, and Schram 2011). On the other hand, when interactions with the state are dispiriting or inequitable, citizens tend to develop negative views of the government as a whole (Lawless and Fox 2001; Soss et al. 2011; Weaver, Prowse, and Piston 2019) Experiences such as having to wait for hours in a welfare office illuminate the power relationships and political forces at play in citizens' mundane, everyday activities (Auyero 2012; Schwartz 1974; Sullivan 2018). Very often, for members of marginalized communities, these interactions insinuate relations that are adversarial and ripe with conflict (Skogan 20006).

Conflict is highly salient in, and indeed a fundamental aspect of, entanglement with the criminal legal system. Existing work has mostly focused on policing and incarceration. Incarceration intensifies inequality in civic and political participation. Wildeman (2014), for instance, finds that children with incarcerated fathers are more likely to end up homeless and less likely to become voters. Incarceration also diminishes trust in other criminal legal institutions, including the courts. Black respondents in one study who had been to prison or had close ties to someone in prison were more likely than other respondents to express the belief that racial disparities in incarceration were due to bias in the courts or policing (Muller and Schrage 2014).

Work on legal cynicism describes interactions between police and historically oppressed communities as a process characterized by mistrust, which sours the relationship between citizens and the state (Sampson and Bartusch 1998). More recently, scholars have extended the idea of legal cynicism by illuminating the structural forces that contribute to these ruptures, notably the discriminatory application of the law and biased police behavior, conceptualizing these dynamics as a process called legal estrangement (Bell 2017). The distrust and cynicism present in marginalized communities are, to a large extent, a product of everyday experiences with criminal legal institutions. Estrangement has demonstrable consequences that extend beyond citizen perceptions and interactions with the police.

Studies of surveillance in the criminal legal system indicate that individuals with histories of criminal legal involvement tend to exhibit avoidance of the state more broadly (Brayne 2014; Goffman 2015; Haskins and Jacobsen 2017). Individuals modify their daily activities in order to evade not only the police and courts but also hospitals, welfare offices, schools and other institutions. Even those individuals who have no official trouble with the

law, but experience some proximity to the system, engage in institutional avoidance, all of which is part and parcel with breakdowns of legitimacy and elevated propensities for illicit behavior (Stuart 2016). For example, Victor Rios (2011) finds that youth turn to criminal activity and view law enforcement antagonistically due to encounters with police at an early age. Work by Rios and others (Carr, Napolitano, and Keating 2007) shows that Black and Latino youth are unlikely to call the police when they need help.

Of particular relevance to the present study, some prior research specifically explores the ways in which police contact and incarceration affect political participation. Such work evinces the role of the prison as an institution of political socialization, which influences voting behaviors and attitudes toward the state (Lee, Porter, and Comfort 2013; Manza and Uggen 2008). Lerman and Weaver (2014) proffer the concept of custodial citizenship, which refers to the deep political alienation felt by individuals with repeated criminal legal involvement. They find that such individuals perceive political participation as an exercise in futility and that the voices of people like them carry little weight in the public sphere. Participants characterize government as distant and unhelpful and politicians as untrustworthy and corrupt.

The current study expands on the literature by examining whether and how interactions with low-level misdemeanors impact political consciousness and engagement. Many misdemeanor defendants end up with no conviction, have no felonies on their records, and are legally eligible to vote (Kohler-Hausmann 2018; Natapoff 2018). This study begins to answer several important questions that have as yet gone unaddressed. Do the court and its disciplinary regime, largely consisting of legal financial obligations and procedural punishment (Feeley 1979; Kohler-Hausmann 2018), affect the ways that defendants view the

state and their relationship to it? What do the processes and interactions that form political consciousness look like? The literature on criminal legal predation provides some further insights.

The Process is the Punishment

Existing research on misdemeanor courts suggests that oftentimes the process is itself the punishment. Misdemeanor cases take lengthy periods to resolve, sometimes up to ten appearances (Feeley 1979). The adjudication process inflicts severe costs on defendants, for instance, the expense of securing counsel, the opportunity costs of appearing *pro se*, and the loss of work time associated with pretrial detention and court appearances, each of which may be exacerbated by continuances. Having to show up over and over again can generate stress, interfere with child-care and wage income, and potentially lead to loss of employment. Misdemeanor courts exert control without imprisonment or even conviction (Kohler-Hausmann 2013). They do so through a set of interrelated mechanisms: *marking*, or the designation of “criminal” status via official public records; *procedural hassle*, which refers to the array of burdens associated with arrest, adjudication, and compliance; and *performance*, entailing defendants’ active demonstrations of worthiness, effort, and adherence to court orders and evaluations thereof (Kohler-Hausmann 2018).

These punitive and disciplinary measures are not equally applied. The most common form of punishment in misdemeanor courts is the assessment and collection of fines and fees. Monetary sanctions uniquely disadvantage certain subgroups of the population, namely the poor and people of color (Harris 2016; Slavinski and Pettit 2021; United States Department of Justice 2015). According to Katzenstein and Waller, monetary sanctions represent an “inverted welfare system” that “taxes poor families to help fund the state’s project of poverty

governance” (2015:639). The report by the Ferguson Commission describes legal financial obligations as essentially exploitative, as they are used to generate government revenue and “disproportionately [harm] defendants with low incomes” (Ferguson Commission 2015:93).

These practices represent a core element of a broader project of predation enacted through criminal legal and other state institutions (Davis 2021; Page and Soss 2018). The bail industry reaps millions of dollars from marginalized communities and does so regardless of defendants’ guilt or innocence (Gupta, Hansman, and Frenchman 2016; Page, Piehowski, and Soss 2019). Private companies are ubiquitous inside prison walls as well. Telephone communication within public prisons, for instance, comprises an industry valued at \$1.2 billion (Page and Soss 2018). Taken together, the various forms of predation and extraction operating within the criminal legal domain exact an enormous toll and heighten the conflict between socioeconomically vulnerable populations and the state (Page and Soss 2017). The effect of financial extraction on political socialization thus demands further examination.

Given the protracted nature of case processing in misdemeanor courts, it not only extracts material resources but also time from marginalized communities. Similar to jails, where detainees spend protracted periods waiting for hearings, the phone, visitors, and their release (Cohen and Taylor 1972; Irwin 1985), misdemeanor defendants expend countless hours dealing with the courts. This results in significant costs (e.g. attorney fees, lost wages, social and psychological strain) (Feeley 1979). Initially, defendants sit in jail for up to 12 hours awaiting arraignment. For subsequent hearings, they have to work out transportation arrangements, take time off from work to show up to court, stand in long security lines, and linger in the courthouse for hours, often many times over since it is typical that cases are repeatedly reset (Kohler-Hausmann 2018; Slavinski and Spencer-Suarez 2021).

Extraction of time and resources can be extremely taxing on the people navigating the misdemeanor court system. Evidence suggests that in general misdemeanor defendants do not believe that police, the courts, and other state institutions are oriented towards their interests. Much like the individuals Lerman and Weaver refer to as custodial citizens, misdemeanor defendants understand their relationships with the state to be fundamentally adversarial. The current study further explores the effects of these conflict-oriented interactions on political consciousness and engagement.

DATA AND METHODS

In order to investigate how interactions within the misdemeanor court system mold the political identities of its disproportionately marginalized subjects, I draw on two years of qualitative fieldwork across 10 criminal jurisdictions in Texas, a state that processes over 7 million misdemeanor cases per year (Office of Court Administrators 2016). Data also includes interviews with 62 court defendants, 18 lawyers, and 17 judges, and 16 defense attorneys, which I use to examine whether and how misdemeanors cases impact political consciousness and engagement. In addition to the interview data, my analysis draws on ethnographic observations of approximately 3,000 misdemeanor cases in 10 Texas misdemeanor court jurisdictions. These jurisdictions are geographically diverse, ranging from large urban settings to small rural ones. Inside the courtroom, the team wrote thorough field notes on interactional dynamics, case outcomes, as well as system actors' and defendants' demographic characteristics, clothing, manners of speaking, and word choice, among other observable factors and processes.

As part of a broader analysis of multiple states, data were collected in three major geographic areas in Texas. These sites were selected for maximal variation and

representativeness with regard to demographics and population size (Harris et al. 2017). Recruitment was done through the posting of flyers, relationships with various criminal legal organizations, and recruitment in and around courtrooms. Defendants came from a diverse set of backgrounds. The majority of respondents were low-income. About 39% of interviewees identified as Black, while 36% identified as white (36%), and 33% identified as Latino or Hispanic. About half of the respondents were under the age of 30. Judges, defense attorneys, and prosecutors were recruited in person. Team members approached them during breaks that occurred in the courtrooms as we conducted hearing observations. Demographics varied widely by region. Overall, judges were about three-quarters (76%) male. All of the female judges who participated in interviews were based in large urban jurisdictions. Eight (53%) judges identified as Latino or Hispanic, seven judges (41%) identified as white, and two judges (13%) identified as Asian-American. Prosecutors were less diverse than judges; 61 percent being male and 55 percent being white.

Field notes and interviews were coded in NVivo, using three separate sets of codes. For all interviews, we developed coding categories through an iterative process of going through interviews and pulling out relevant categories until new codes stopped appearing. The first set of codes centered on decision-makers and applies to interviews with judges, prosecutors, and defense attorneys. Codes revolved around civic and political participation, decision makers' perceptions and judgments of defendants, the types of sanctions and stipulations that decision-makers encouraged or imposed, and how they exercised discretionary authority. For the second set of codes centered on defendants, we paid particular attention to what was said about their experience with voting, civic engagement, monetary sanctions, their experiences showing up to courts, and their participation in court-mandated

programs and community service, particularly how these experiences impacted their daily lives and views of the state. The third set of codes applied to the direct observation of courtrooms. Some of the most salient codes pertained, first, to interactions between courtroom actors and defendants and, second, to the punishments and requirements imposed by the courts.

Existing ethnographic work on courtroom processes has typically studied one or two specific courtroom jurisdictions (Gathings and Parrotta 2013; Kohler-Hausmann 2018; Van Cleve 2016). While providing many important insights, it remains unclear whether the processes observed in such studies are unique to the specific research sites. Van Cleve (2016), for instance, observed an exceptionally large Chicago felony court, while Kohler-Hausmann (2018) studied New York City misdemeanor courts. The present study explores how these same processes take place in a variety of settings, including large metropolitan jurisdictions, smaller cities, suburban locations, *and* rural towns. Moreover, it considers apparent relationships between what happens inside the courtroom and the demographic makeup of the area surrounding the court. Texas has 254 counties of various sizes and demographic compositions. Politically, Texas has both very conservative and very liberal jurisdictions. Hence, as a research site, Texas provides abundant opportunities to examine the intersections of demographic and procedural variation in the courts.

While representativeness may not be a realistic or even desirable goal in ethnographic research, it is generally important to prioritize internal variation (Katz 2001). One method for achieving internal variation is what Mario Small (2009) refers to as sequential interviewing, where one continuously adds cases until attains saturation. In other words, the researcher proceeds with data collection up to the point of diminishing returns, when the data no longer

yield new insights. As with the interviews, the court observations did not involve any attempt to the approximate representativeness of courtrooms across the country. Yet, observing numerous courtrooms varying in size, location, and demographic makeup, and interviewing participants across these jurisdictions, provides a more expansive and complex picture of the misdemeanor system than what is rendered elsewhere in the existing literature.

FINDINGS

The Process as Predation

Defendants described the misdemeanor system as extracting time and money while causing a wide range of difficulties in their lives. By and large, the defendants in the study had trouble paying their financial obligations to the court, which in turn produced a great deal of stress. Additionally, defendants faced substantial time burdens, spending countless hours dealing with the court. These negative experiences affect defendant conceptions of citizenship and their relationship with the state. Defendants develop an adversarial relationship with the court, where they feel their voices do not matter. Many defendants felt that court-imposed penalties and requirements were unfair. For example, Delmy (61), a Black woman, characterized the process as impersonal:

It's like you don't have a voice in it. Your voice is muted. Then, anything they say is the truth. They don't even know your story, personally. They don't seek to care or seek to understand. I told her, I said, "Instead of helping me give ..." She's basically giving me the BPS number, like, "Oh, call them and do this, do that." I'm like, "I don't need that. What I need, do you have a list of jobs that's going to get me so I can pay these fees and my tickets? Can you help me with that?" She's just, "Oh, no." She didn't want to hear it. She didn't care.

Even when defendants viewed their fines as reasonable, the considerable amount of time they spent dealing with the court was alienating. Taylor, a white man, did not object to the court imposing monetary sanctions, but he did take issue with being told to come to court over and over again. He described the process as “exhausting,” referring to it as “torture.” Though he proclaimed his innocence, he did not have the energy to keep fighting the charge. Similarly, Elliott, a Black man, related in great detail how he kept having to come back to court for months on end, losing valuable time at work which translated to lost wages for him and his family.

Defendant participants did not believe the system is set up to help them. Many construed it as a big business, a way for the state to make a profit and “screw people over.” “They just want our money” was a common refrain across defendant interviews. Hunter, a white woman, summed up this position. “You go in there blind, and to me, it's an unfair system. To me, it feels like money, money, money, forget about the little person, the person that can't ... It's just a money game.” Ignacio, a Latino man, expressed a similar attitude, passionately asserting that the courts only want people’s money. There is anger and frustration in his voice:

It's just money coming in from every mother fucking way. Yeah, you've got people lining up at six o'clock, seven o'clock in the morning, ready to go pay their fucking ticket.... It's just a big ass business for people who ... Whoever has their hands tied into this, whatever you want to call it, they're the ones gaining from it. They're the ones getting all the money, they're the ones benefiting. Screwing the citizens over type shit.

Ignacio did not specify who “they” are, but this seemed to include all actors involved: the court, the criminal legal system, the police. Some defendants more explicitly stated that they perceived the entire system as out to get them. Theo (45), another Latino man, vaguely

indicated that he “doesn’t trust them.” When I asked him to clarify whom he did not trust, he replied, “Everyone involved in the courts, the police, all of them. . . . It hasn't helped my family out, it hasn't done anything except take things away, so I hope that something gets done about it to fix all this crooked stuff.”

Another common impression among defendants was that the system is a trap. Because the court’s requirements were seen as unreasonable, defendants felt that they were caught in a vicious cycle. Dannell, a Black man, explained that in the vast majority of cases, “They give you all of those fines and things of that nature to keep you trapped in the system, you know? Because if you really think about it, the common denominator of people, they're not gonna be able to pay those high fees that y'all asking us to pay. You know? And so, it's gonna be a revolving circle once it begins.” Kimberly, a Black woman, described the process as a cycle that keeps “going and going” and as something that “haunts” her. James, a white man who was formerly a corrections officer and a deputy sheriff, expressed the view that [court-ordered fines, fees, and other sanctions are] all part of a “broken system” and “once you’re in, it’s hard to get out.” Many others conveyed a related sentiment that the system works for white and wealthy populations, but not for them.

Defendants involved in the misdemeanor legal system shared a wide range of experiences, backgrounds, and perspectives, but almost all agreed that the courts are not on their side. The “corrupt” or “broken” courts want their money and, to that end, put them in unfair, difficult-to-navigate situations. These experiences produce lasting effects on how they see not just the courts, but the criminal legal system and the state more broadly. These adverse experiences and interactions play a major role in constructing the way that people see their place in society and impact their civil and political engagement.

Conflict in the courtroom

In addition to the extraction of time and money, courtroom processes foster a hostile relationship between the state and its citizens. On countless occasions, I observed court actors reprimand, threaten, mock, lecture, or yell at defendants, even kicking people out of the courtroom, for a wide range of real and imagined infractions. Defendants often left in anger and frustration. Judges and prosecutors related their mistrust of defendants, often referring to them with condescending terms like “schlubs” and “losers.”

In one suburban court in Central Texas, I sat with Linda, a middle-aged Latina prosecutor who took her role very seriously and portrayed herself as seeking justice. She boasted of never having lost a case. At one point a Latino male in his forties entered the courtroom. He was charged with a traffic offense: cutting through a parking lot. Video footage showed his car driving through a lot without stopping. During questioning, Linda pressed the man on a couple of seemingly inconsistent responses and accused him of lying. The hearing concluded with his acceptance of a \$150 deferral; he then walked out, visibly frustrated and upset. Afterward, Linda said, "People lie to me every day." One of many similar instances occurred in a metropolitan jurisdiction, where I observed a judge admonishing a defendant that she was not born yesterday, and he needed to stop lying to her about making efforts to find work and stay out of trouble.

On another occasion, I was observing a courtroom in a large urban setting. Judge Marcos, who had served on the bench for 25 years, was described by other court personnel as well-liked and respected. However, he lectured and scolded defendant after defendant, telling them they had no talent for crime, disparaging them as “schlubs” who needed to be productive citizens. He asked each one if they were employed and harangued them about the importance

of work if they said no. Other judges used threats. For example, in another large city near the border, a judge warned defendants that if they failed to meet his requirements, he would throw them in jail. Conversations like the following one were typical.

A young, Latino defendant is talking to a judge, trying to plead his case. He continues crying, saying “Please, I just wanna be with my son. I just gotta do 2 classes, that’s all. CPS told me the SMART program is not gonna help you”

The judge shouts at him “Stop. Just stop. I’m not born yesterday. Stop lying to me.” He pleads again, “I’m not lying!” She sighs and says “1 more 30 day reset. If you miss a UA (urine analysis), if you miss a meeting, I’m sending you to jail for 18 months.”

Several judges even threatened non-citizen defendants with deportation. For example, one judge in a large urban jurisdiction berated a defendant about not speaking English, threatening to have him deported and upbraiding him for requesting a court-appointed attorney, saying that it was a waste of taxpayer money.

In addition to verbal abuse, distinctions between defendants and state personnel were enforced in several ways. In one suburban courtroom, defendants saw their name and their offense publicly displayed on the wall. When entering the courthouse, they were instructed to line up single-file to await a search and pat-down by the security guard. Rules outlining impermissible behavior were posted throughout the building. Upon entering the courtroom, their movements and actions were strictly controlled, notably including a prohibition on cell phone use.

The following recapitulation of a passage from my field notes is representative of many courtrooms that were observed: “I heard someone’s ringtone go off. My first thought was the potential reaction of the bailiff, who had already been lecturing people for various reasons. It was the judge however who reacted first. His face wrinkled into a scowl as he said,

‘Please turn your phones off’ in a strident tone. The bailiff must have heard him because she ran back into the room, face turning red, and yelled out, ‘I believe I told everyone to turn their phones off!’ She was clearly unhappy at what she perceived to be a blatant act of insubordination.” Other courts even gave citations for cell phone use, usually around \$25. On one occasion, a man was kicked out of the courtroom for using his phone and made to come back later in the day.

Another frequently perceived infraction was sitting in the wrong place. In one courtroom, the bailiff insisted that everyone sits in the front row, and if anyone failed to do so, she would yell at them. Many policed acceptable courtroom attire. In one suburban courtroom, a monitor laid out the rules: nothing too short, too tight, and no miniskirts. If defendants were not dressed “appropriately,” they would be told to go home and rescheduled for another court date. Other transgressions that provoked censure including having a crying baby in the courtroom, reading in the courtroom, and being late.

Observing defendants in the courtroom, I witnessed a mixture of disinterest, confusion, frustration, anger, and contempt. I saw people frowning, crying, rolling their eyes, blatantly ignoring court personnel, and leaving the courtroom. During interviews, many defendants complained about disrespectful treatment by court actors, including harassment for minor and unintentional violations of rules that they found confusing or unreasonably stringent. It is therefore unsurprising that the defendants in this study felt antagonized by the courts. Not only were they compelled to give up time and money that they desperately needed; they were also subjected to censure and derision. In this way, defendants felt the misdemeanor system added insult to injury.

Disengagement with Politics and the State

As the literature (Brayne 2014; Goffman 2015; Haskins and Jacobsen 2017; Lerman and Weaver 2014; Stuart 2016) demonstrates, continuous adversarial interactions with the state, and criminal legal institutions, in particular, shape the ways in which citizens deal with institutions and participate in the political process. Just as prisons represent a “powerful institution for political socialization” that influences voting behaviors and political attitudes (Lee, Porter, and Comfort 2013), I argue that even lower-level criminal legal interactions, including those resulting in neither incarceration nor conviction, can produce similar effects. Most defendant interviewees conveyed cynical views of the state and the political process. Government institutions and the bureaucrats and politicians that represent them are perceived as looking out for their own interests, often at the expense of disadvantaged groups like criminal defendants. Indeed, participants used terms such as “sketchy,” “bought,” “corrupt,” “cheatin,” and “big business” to describe state actors.

After spending months dealing with the misdemeanor court system, one participant, Kimberly, was unable to pay her fines due to childcare obligations. This decision caused her great stress and resulted in additional fees. Moreover, she lost her license but due to work obligations, had to continue driving, putting her in danger of having additional legal trouble. To Kimberly, there was no end in sight to this ordeal. When I asked how her experience had affected her political participation, she replied that she does not vote and elaborated on her rationale:

Because it doesn't seem like it really matters because they're going to do whatever they want to do. So that's why I just kind of don't give a lot of energy to it. That's what happens, they do whatever they want to do pretty much...They just do whatever they want to do, whatever serves their needs best is how that works in my opinion.

Other participants echoed the sentiment that it is not worth participating because politicians just do whatever they want and look after their own interests. Lyle, an older Black man, recounted the process of getting arrested for a low-level marijuana possession charge and how it made him feel like less of a man. He explained that he had never voted “because I’ve never seen a president that cares, really just cares.” The political system, in his view, just tries to “get money out of the public” and “keep us broke.”

The notion that the misdemeanor court system intentionally tries to keep people broke was shared by many participants. Morgan, a Black man who owed over \$1,000 in traffic violations and had even spent time in jail for failure to pay, felt that he was being “overtaxed” and “robbed” for “simple mistakes.” He attributed these sanctions to state employees who need his money to continue getting paid. Regarding the subject of voting, he communicated a sense of futility. His vote does not matter, so why bother? Ari, a Latino man, related a similar attitude, talking about how he feels he has no say.

It's almost an inside, and I'm on the outside, I guess you could say, how I think about it...Like it's all what people do. I don't know. How can I explain it? Like we have no say. Whatever the people on the inside want is what... It's all politics. Government, whatever. It's all them. It's all the system. It's all business to them. It's like, "Well, you're just a walking dollar sign, so who cares." That's how I see it, because really it is.

The idea that one’s vote does not count emerged over and over again in defendant interviews. Dannell, for instance, responded to a question about electoral participation: “Voted? No. I know it don't matter, man. You know what I'm saying? It's whoever they want it to be. For real. If you really think about the shit. They cheatin'. What they tell you. It's who they want it to be. So, no. I don't vote.” Aidan, a Latino man, added to the chorus: anyone can be bought and there are ways to cheat the system, so voting seemed pointless.

For some defendants, the misdemeanor courts directly affected their political participation by draining what little time and money they had. They either could not get to the polls or could not take time off from work. Tara, a Black woman, tells me that she simply did not have the resources to get to her polling station. This obstacle, combined with her sense that politics do not serve her interests in any meaningful way, ensured that she would not participate.

Importantly, alienation from the political process did not translate to disengagement from defendants' own communities. Many participants talked about directly helping others through volunteering at food banks or church activities. Compared to electoral participation, localized action and mutual aid seemed to offer much more efficacious avenues for affecting change. It represented opportunities to exercise personal agency in fulfilling, prosocial ways. Vennie, a young Black man, exemplified this theme:

So, we're pretty much just trying to come up with a little program, man, and we've been working on it for about a year, year and a half, man. And what we want to do, man, is set up some times, man, and we're just going to post it up places, like giving stuff out for the kids, try to do back-to-school stuff, and even for the homeless, man, we're going to start on Sunday's we're gonna cook really, really big dinners, man.

Vennie cared deeply about his community and working on a program to help people directly allowed him to actualize this commitment. At the same time, official political channels were of little interest to him. The government, he explained, is “so sketchy and everything, and I just try to stay away from that stuff. Cause I get to looking at politics and this stuff about the world, it worries me, man. It just worries me.” Previously, he complained of having no idea where the fines and fees he pays go and what ends they serve. He hoped the

funds would be directed towards helping the community but guessed that they probably just go towards paying all the court employees and keeping the system going.

Remy, a white woman on disability, was also involved in her community. She built houses with Habitat for Humanity and handed out food to the homeless in her city. She instilled those same values in her daughter and they even built a house together. Yet, when the topic turned to voting, she, like Vennie, conveyed no interest and no faith in the system. “No, I don't vote. I figure it doesn't count. Probably does. But yeah.” Asked her if she would ever vote in the future, she said, “Not unless I get some benefits from it. Maybe if there's somebody worth voting for I'll go do it, yeah.” Though she did not rule out potentially voting in the future, Remy maintained a degree of cynicism broadly consistent with that of other defendants.

Remy related an unfair and conflict-ridden experience with the court. Prosecuted for theft after an incident in which she ate a deli sandwich at Walmart and discarded the packaging, Remy insisted that she was planning on paying for it. For that \$7.50 worth of accidentally filched merchandise, she was assessed \$692 in fines and fees. Being unemployed, disabled, and a mother of two daughters made paying the monetary sanctions extremely difficult. The whole process was deeply disillusioning, changing her view of both policing and the courts for the worse, and contributing to her lack of faith in political processes.

Discussion and Conclusions

Drawing on ethnographic observations and interviews, this paper provides an in-depth examination of interactions between defendants and the misdemeanor court system, illuminating the role of lower-level courts in shaping political consciousness and engagement. Expanding on work on legal cynicism, legal estrangement, and custodial citizenship, I

demonstrate that, even for low low-level infractions that do not lead to incarceration (nor sometimes even conviction), criminal legal interactions can still have a powerful and lasting effect on political engagement. Findings suggest that these effects are overwhelmingly negative, due in large part to the oppositional nature of defendants' relationship to the misdemeanor court system. Defendant interviewees describe the system as causing great stress and hardship. It greatly reduces their limited financial recourses and makes enormous demands on their time.

Additionally, I observed processes within the courtroom that perpetuate conflict, hostility, and mistrust. Extraction of time and resources combines with courtroom conflict to create an antagonistic relationship that affects misdemeanor defendants' view of the court, the criminal legal system, and the state more generally. The majority of defendants do not vote. Crucially, and departing from previous work, this study indicates that withdrawal from state institutions does not necessarily imply a lack of community engagement. Many interviewees described being active participants in their communities or in humanitarian causes.

These findings have important implications for the literature on system avoidance and political socialization. My findings are largely consistent with other work on the criminal legal system (Brayne 2014; Goffman 2015; Lerman and Weaver 2014; Sampson and Bartusch 1998; Stuart 2016) and the state more broadly (Auyero 2012; Lipsky 1983; Marshall 1950; Mettler 2005; Soss et al. 2011). I extend the study of this relationship by closely examining the interactional processes and dynamics that make up political socialization in one particular domain. Importantly, I find that in certain institutions and under certain circumstances, citizens can simultaneously develop negative perceptions of the state and still retain their commitment to their own communities.

Future scholarship should pay further attention to the alternative ways in which members of the community remain active and engaged with their social worlds, even when they are disillusioned with official state channels and processes. Governments should critically assess the ways in which they perpetuate conflict with their own citizens and discourage political participation, particularly for marginalized communities. Common narratives surrounding non-voters stress apathy and often morally deride members of the community that do not participate. Instead, scholars, policy-makers, and activists should critically examine the ways in which adversarial state relations create fractured relationships with citizens that discourage voting and participation.

CHAPTER 5

Conclusions

This dissertation examined misdemeanor courts in order to provide insight into how the criminal legal system regulates and manages the millions of people for whom the most common interaction with the state is dealing with misdemeanor courts for minor infractions. It looked at the effects of minor criminal legal contact on marginalized and vulnerable communities. This work expands upon existing scholarship of the misdemeanors court system and makes several new and important contributions. Through the development of the concept of “predatory rehabilitation”, I demonstrate how judges and prosecutors within the misdemeanor court system want to deter crime and express a sincere desire to rehabilitate criminal defendants into productive, market-oriented citizens while simultaneously engaging in extractive practices that make deterrence and rehabilitation challenging.

Empirically, I draw attention to how seemingly minor, morally irrelevant, infractions become a critically important site to witness the production and maintenance of inequality I explore how this inequality plays out within and across courtrooms and how defendants, attorneys, judges, and prosecutors understand what they are doing in the misdemeanor space. Judges and prosecutors do not conceptualize lower level misdemeanors as morally reprehensible crimes, yet, for people who can’t pay them, they become an on-going source of surveillance and policing and an opportunity to demonstrate moral worth and behavioral rehabilitation or conversely, to become further entrapped in the criminal legal system.

In the introduction, James was introduced to highlight the extended and profound challenges that misdemeanor defendants living in poverty face. Over the course of many years, defendants like James are stuck paying enormous amounts of money and spending a

tremendous amount of time navigating the misdemeanor court system. Throughout the dissertation, the reader is introduced to a myriad of characters from various walks of life who have stories similar to James’.

The second chapter explored this seeming contradiction and provided a comprehensive account of the ways in which judges and prosecutors manage defendants and attempt to get them on the right track (stable employment, finishing degrees, taking care of families, and staying out of trouble). It contrasts their perspective with that of defendants who articulate in great detail the difficulties they face through the extraction of financial resources and time. Theoretically, this chapter expands our understanding of contemporary punishment and rehabilitation through a lens of neo-liberal predation. With seemingly good intentions but completely outside of the realm of guilt and innocence, judges and prosecutors attempt to rehabilitate defendants and get them on the right track while participating in a system that extracts defendants of precious time and money. Predation therefore does not necessitate intent and that rehabilitation can be hollow and extractive, particularly under a neoliberal regime that places market worth above everything else.

The third chapter made another key contribution. It highlighted the fact that the misdemeanor court system operates differently based on the race and class position of the defendant and that this differentiation exists outside and within official stages of criminal justice processing. Wealthy defendants are able to take care of their cases without showing up to court by paying their fines and fees over the phone or online or by hiring an attorney to show up in their place. Poorer defendants are less likely to have these advantages.

Additional processes exacerbate inequality inside the courtroom as well. I document the ways in which courts also contribute to inequality through less official avenues than the

ones described in most existing literature. I find punishment for inappropriate courtroom behavior and lack of cultural knowledge. I also find that the court is mistrusting of many misdemeanor defendants. These processes are classed and racialized. This chapter brings nuance and detail to the theory of compound inequality. Inequality is amplified in moments and spaces not captured by traditional data and case outcomes. It also compounds in the extralegal moments of interactions between defendants and the courtrooms they interact with, the clothes they wear, the behaviors they exhibit, the lectures they receive that have nothing to do with their cases, and times they are sent home, the inability to use the proper language or show the proper amount of respect.

Finally, chapter four explored how regulation within misdemeanor courts affects political socialization. I demonstrate that judges and prosecutors facilitate predatory and extractive practices that extract defendants of resources and time. Additionally, I illuminate the adversarial nature of courtroom interactions. Judges, prosecutors, and other courtroom actors like clerks and bailiffs often reprimand, scold, lecture, and embarrass misdemeanor defendants. Misdemeanor defendants' accounts of their experiences with the court are filled with struggles and the vast majority do not vote. Importantly and building upon previous work, defendants continue to be engaged in their communities in other ways, doing volunteer work and engaging in their communities.

This dissertation is not without its limitations. First and foremost, all of the data is collected in Texas. Although Texas is a large and diverse state, further work should explore whether these practices look similar or different in other parts of the country. Second, there has been a lot of discussion and energy around criminal justice reform in recent years. This data was largely collected before this important moment in history and further work should

explore if this energy has created any recent change that affects these findings. Additionally, there is always a challenge in qualitative work to separate what is said from what is directly observed. Particularly in relation to the amplification of inequality discussed in Chapter 3, color-blind practices that compound inequality can be very difficult to observe. I did my best to match what was said by subjects with direct observations in the courtrooms but was not always possible. For example, when defense attorneys told me that the majority of their clients were poor people of color, there is no way for me to verify this information. I have to trust that they were telling me the truth. Finally, my own positionality undoubtedly affected my findings. Being white, male, and straight-passing gave me access and honesty from decision-makers that I otherwise may not have gotten. On the other hand, when talking to poor and Black and Brown defendants about their negative and sometimes traumatic experiences, our social distance may have limited my ability to gain certain insights.

These limitations offer directions for future research. In addition to examining these practices in other jurisdictions, analyzing the effects of criminal justice reform efforts, and finding more direct ways to measure inequality, future research can also focus more closely on the variability within my existing data. While I spent time in rural courts and spoke to rural decision makers, I was not able to interview defendants from rural jurisdictions to fully understand how some of the variation in my study affects the processes that I was able to observe. I would also like to better understand the importance of retaining counsel. In several courtrooms, dockets were dedicated to attorneys. For those cases, no questions about employment, education, and market-worth were asked. Clients automatically received the best possible outcome. While it is true that it is easier to hire an attorney if you are wealthy, this overlooks the aggressive and sometimes predatory marketing practices of private attorneys in

this space. In one jurisdiction, I learned that the courts sent private attorneys case information, allowing firms to aggressively target potential defendants. Cases like this may complicate the divide of who ends up in court and who is subject to court regulation.

This dissertation is a rich examination of the misdemeanor court system with many implications for how we think about the criminal legal system and the state more broadly. How citizens view their state is based on whether their interaction with the state is positive or negative. Poor and minority communities are more likely to interact with the misdemeanor court system and this interaction is more likely to be a negative experience. These negative experiences add up and have profound effects on the ways that citizens view the state and their role within it.

This dissertation forces us to think about whether the misdemeanor court system, through its assessment and collection of legal financial obligations and arduous time requirements contributes to justice? It asks whether these punishments affect everyone equally or do they have a profoundly more serious impact on the lives of the already vulnerable and marginalized? The answers to these questions have important implications for how misdemeanor courts are conceptualized and the policies and legislation surrounding the misdemeanor punishment regime. If these practices and policies are unequal, do not create justice, and have a profoundly negative impact on citizenship, then I argue the misdemeanor court system needs to be reconceptualized. First and foremost, the answer lies in decriminalization. Lower-level offenses where the only penalty is a fine are inherently unequal. \$200 will never be the same for someone who is wealthy and someone who is poor. Navigating the court system will always be more difficult for the poor. Moving low-level criminal offenses to the civil court system will solve many of these issues. In the meantime,

several common-sense policy proposals could make the misdemeanor court system more just and more accessible.

To help make fines and fees more affordable I have recommended in previous work (Slavinski and Suarez 2021) and continue to recommend, “informing defendants of their rights and procedural options related to indigent status; expanding the scope of indigent qualification; instituting comprehensive ability to pay determinations that take into account lived experiences and difficult choices, and enacting retroactive indigence/debt forgiveness.” To reduce inequalities, I recommend “jurisdictional audits of existing fines and fees by independent commissions; the elimination of unnecessary fines and fees; the elimination of poverty penalties; scaling LFOs to income; and halting incarceration for nonpayment.” Finally, to address burdens and accessibility I recommend “instituting public systems for payment and communication with the court; establishing worker-friendly hours and scheduling practices, and exploring alternative systems such as mobile courts to make court appearance more accessible and defendant friendly” (2021:21).

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