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Racism in Barnstable County's Judiciary System

Olivia Brown

Submitted in Partial Completion of the
Requirements for Departmental Honors in Criminal Justice

Bridgewater State University

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Abstract:

This research outlines how racism is prevalent in the court system in Barnstable County, Massachusetts. When looking at research of racism in Massachusetts' courts, specifically from the Harvard Law Report titled, "Racial Disparities in Massachusetts Criminal System," published in 2020, I became intrigued with the topic. This raised the research question of is racism prevalent in Barnstable County's judicial system. This study consists of interviews with defense attorneys from Barnstable County, detailing their personal experiences and thoughts on racism in the courts. This study demonstrates that there is racism in this court, however it tends to go unnoticed due to the county's primarily white population. Majority of interviews suggest that the police officers in Barnstable County contribute heavily to the racism that is seen in the courts by racially profiling during traffic stops.

Introduction:

Racism has long plagued the judiciary system in the United States. With many scholars previously researching the history of racism in the United States courtroom, this research focuses primarily on a specific area that has not been discussed. The main goal of this research is to examine racism in the Barnstable County court system.

According to the US Census Bureau, the total population of Barnstable County in 2021 was 232,411. Barnstable County is located on Cape Cod, which is made up of the towns; Barnstable, Brewster, Bourne, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet, and Yarmouth. The population is 92% white, 3.5% Black, 3.4% Latino, 1.6% Asian, and .7% American Indian.” (census.gov, July 2021). As someone who has lived in Barnstable County all of my life, myself and others have begun to notice more minorities moving to Cape Cod, Massachusetts. Although this research is not aimed to show that there are more people of color than white people in this court system, because this is simply untrue. Population wise, the Cape and Islands are made up of predominantly white individuals. This research is not aimed at showing racism occurs through numbers in the courts, it aims to show the differential treatment among the races in the courtroom.

I was especially interested in conducting a study on racism in the courts of Barnstable County because it has something I have never seen done before. After the murders of George Floyd and Ahmaud Arbery, I became interested in exploring racism in the courts more in depth, due to a new heightened awareness of what was going on in the world. When in September of 2020 Harvard Law published a study on racial injustices in the Massachusetts criminal system,

this sparked my interest in exploring racism in this specific county. When discussing with family and friends the topic of racism in our local courts, they said that it cannot happen here because everyone is white. However, I saw this as an opportunity to show people that it does happen here and can happen anywhere. The “not in my backyard” mentality does not apply when discussing racism. It is in our backyard, right in front of our faces. I have lived my entire life on Cape Cod and had never really thought about racism in our courts. This county is so small that it is easy to be hidden, and not talked about at all.

When I decided to research racism in Barnstable County courts, I was lucky enough to have personal contacts to the courts to find attorneys to interview. As I plan to attend law school and become an attorney, I have learned how prevalent racism is within our judicial system in the United States. Learning about racism and hearing about the George Floyd murder, the Ahmaud Arbery murder with an all-white jury, and a handful of other racially motivated cases sparked my interest in this topic. The goal for this research is to explore how racism is prevalent in Barnstable County’s court system.

Review of Relevant Literature:

Institutionalized Racism

To begin to acknowledge how racism is prevalent throughout the court system today, one must look at how a history of institutionalized racism is defined and how it began. In the article, “Confronting Institutionalized Racism,” by Camara Phyllis Jones (2002), the author defines institutionalized racism as “the structures, policies, practices, norms resulting in differential

access to the goods, services, and opportunities of society by race” (Jones, pg. 10). This article primarily focuses on the conversation between health and racism; however, the definitions of race, racism, and institutionalized racism are crucial to the understanding of how these terms have impacted the judicial system. When discussing the term “institutionalized racism”, Jones refers to policies and practices that have long been in place that pose inequalities for individuals of color. Institutionalized racism refers not only to accessibility of material items, but also focuses on access to power (Jones, pg. 10). The materialized view of institutional racism includes differential access to quality education, housing, employment, medical treatment, and a clean environment to reside in. With the access to power disadvantage represented in institutionalized racism, the author refers to inequal representation in government, voting, wealth resources and much more (Jones, pg. 10).

When discussing racism, Jones points to the idea that it is a system that structures opportunities and values of individuals based on their phenotypes and the way they look (Jones, pg. 9). This system of racism unfairly affects certain individuals and communities, while other communities consisting of mainly White people are unfairly advantaged as opposed to their minority counterparts. This brings about the issue of white privilege, which is a taboo not very often discussed in society. Jones discusses racism in the sense that it is a waste of human resources, as children living in ghettos, barrios, or reservations are not valued, thus these potential contributions to society are forgotten about (Jones, pg. 9). As these individuals are typically ignored and valued as less than, society ultimately forgets them and sees as it can move along without them. If these groups were acknowledged and provided with the same resources as people in affluent white communities, the nation would potentially be in a much better place. However, a nation cannot thrive when not all of its people are equal.

Race as a Social Construct

In chapter four of the book *Racial Formation in the United States*, titled “The Theory of Racial Formation,” by Michael Omi and Howard Winant (2015), race is known as the making up of people. Omi and Winant define the term race as, “the concept that signifies and symbolizes social conflicts and interests by referring to different types of human bodies,” (Omi and Winant, pg. 110). Although race as a concept involves biologically based human characteristics or phenotypes, the selection of these features is almost always a social and historical process. Race is a concept that refers to different types of human bodies and their physical features, along with the different social practices that are ascribed to these different characteristics.

Omi and Winant also introduce the concept of racialization, which is defined as, “the extension of racial meaning to a previously racially unclassified relationship, social practice, or group,” (Omi and Winant, pg. 111). Racialization takes place in small- and large-scale ways, in a micro and macro way. In the large scale, racialization is the formation and consolidation of what is the modern-world system. This includes African American slavery, abolitionism, and the settlement of the western hemisphere that shaped racial meaning in a social sense. In smaller scale ways, racialization includes racial profiling, and the idea of making up of people (Omi and Winant, pg. 111).

After exploring the definition of institutionalized racism from Omi and Winant, looking at how Van Cleve and Mayes view race as a social construct is especially important. In the article, “Criminal Justice Through Colorblind Lenses: A Call to Examine the Mutual Constitution of Race and Criminal Justice,” by Nicole Gonzalez Van Cleve and Lauren Mayes (2015), race is defined as “socially constructed rather than biologically determined, with the

meanings of racial categories changing over time and with political contexts. However, while race does not connote biological difference, the social difference ascribed to physical features has material consequences.” (Van Cleve and Mayes pg. 418). In this research, Van Cleve and Mayes primarily focus on how race is defined with little to do with biological differences, rather it is now defined by the privileges and disadvantages that society is structured around. In Joe R. Feagin’s 2006 theory on systemic racism, the United States was founded on the oppression and economic exploitation of non-white people, primarily African Americans (Van Cleve and Mayes, pg. 418).

Racism is not the fault of an individual’s beliefs, rather it is focused on a system that has repeatedly exploited and oppressed people of color. The negative stereotypes of people of color have been used to justify this exploitation. When looking at how these definitions fit into the criminal justice system today, the stereotypes that have long been accepted that black men are dangerous allows for more punitive punishments for crimes (Van Cleve and Mayes, pg. 418).

Looking at race as a social construct is important to the understanding of institutionalized racism. Historically, black people have been a target of laws that are intentionally meant to be discriminatory. After Emancipation in the South, following the adoption of the Thirteenth Amendment, black people were subject to rules and regulations that formed as a loophole to this amendment. The loophole from the Thirteenth Amendment that allowed for black Americans to be enslaved if convicted of a crime (Hinton, et. al., pg. 2). Newly emancipated Black Americans were targeted by this, as a way for society to continue to watch over and exploit them for labor purposes. In 1865 and 1866, Confederate legislatures created Black Codes to force former slaves into a labor system similar to the plantain style work. Although these newly freed slaves were considered American citizens, they were not allowed to vote, serve on a jury, or testify in court,

(Hinton, et. al., pg. 2). Vagrancy laws were set in place so a black person could be arrested if they were unable to prove that they worked for a white employer. These vagrancy laws led to contract leasing, where a person convicted of a crime such as “night walking” or any other minor crime could be enslaved as a punishment, (Hinton, et. al., pg. 2). The South notoriously targeted black Americans for these miniscule crimes, similar to today’s concept of racial profiling.

For the understanding of institutionalized racism, it matters that race is considered social and political rather than biological. After black Americans were Emancipated, they were technically legal citizens based on their biological phenotype. However, policies that were put in place by legislatures served as a way for law makers to continue to prove that although they were free people, they were not free in the eyes of the law. It became unconstitutional to discriminate for biological reasons, thus leading to discriminatory social practices that continued to alienate racial minorities.

As socially constructed concepts of race connect to institutionalized racism, it is also exceedingly important to acknowledge the affect that institutionalized racism has on policing practices. The “broken window” style of policing is one of the most flawed and racially motivated aspect of policing. This model focuses heavily on signs of disorder, like broken windows, and minor offenses such as loitering, graffiti, and panhandling are ignored, a community will descend into extremely violent and chaotic, (Ritchie, pg. 2). This idea of broken window policing relies on instilling fear over minor offenses, aimed at promoting more security and to root out certain groups of people. This style of policing was extremely popular throughout the 1980s, with a conservative law and order and tough on crime persona, (Ritchie, pg. 2).

After Emancipation in the South and the development of the Black Codes, society moved towards Broken Window policing. With the Black Codes and vagrancy laws of the 1860s being

set in place to continue to criminalize and control racial minorities, the style of Broken Windows resembles these policies put in place long ago. Under these vagrancy laws, black Americans were subject to targeting by police for minor offenses, with the courts holding them to involuntary labor (Ritchie, pg. 3). The same message applies with broken windows, with police targeting low-income Black communities, arresting them for minor offenses that resulted in hefty fines and other collateral consequences.

With this new tough on crime policing strategies, incarceration rates in the United States have dramatically increased. The hyper activism of police trying to abolish crime by being tough on minor offenses has disproportionately impacted incarceration rates of racial minorities. America's prison system has completely transformed from being majority 70 percent white and 30 percent African American and Hispanic. By the end of World War II, this shifted to 70 percent Hispanic and African American and 30 percent white (Wacquant, pg. 7). This was due to the targeting by police in low-income Black neighborhoods.

Racism in the Courts

In *Crook County*, Nicole Gonzalez Van Cleve (2016), focuses on exposing racial injustices and abuse in the court system in Cook County, Chicago. As a person of color, Van Cleve reveals information in her book about the racism and abuse defendants of color faced in this courtroom at the hands of white judges and attorneys. The book focuses a lot on how attorneys and judges perceive defendants. In chapter two of this book, Van Cleve describes encounters with prosecutors. These prosecutors genuinely feel as though they are the “good guys” in the courtroom, putting away monsters who commit crimes and shame defense attorneys for representing them. In this book, the defense attorneys give little time and resources to their

clients. When detailing one of the public defenders marked as “Sara” in the book, Van Cleve describes how this public defender ignores her clients entirely, does not meet with them in lockup, and only speak to her clients during their quick hearing in open court. Her clients could not understand the legal jargon she used, as she spoke “to the record” rather than actually speaking to her client herself (Van Cleve, pg. 76). This type of defense that Van Cleve describes is these public defenders form of “efficient” representation. This type of defense left Sara in good standing with prosecutors and the judge, as she was not truly advocating for her clients. When one of her clients asked for a new attorney, the judge immediately refused saying that this is all he can get because she is a public defender and defense attorneys cost money that he does not have. This type of defense outlined in this chapter of the book is a shocking revelation of how defense attorneys in this county do not advocate for their clients.

In Van Cleve’s work once again, an important detail of her research comes from her own interviews that she conducted in the Cook County court system. These interviews consisted of questions on whether or not defendants in the court are treated fairly regardless of race and class. These questions were asked to both public defenders and private attorneys. In this book, out of the 26 public defenders that this question was asked to, all say no to this question. When private attorneys were asked this same question, 11 private attorneys answered yes, and 11 answered no (Van Cleve, pg. 97). When Van Cleve analyzes the data collected, she states that public defenders were universal in their agreement that racial bias exists in the courtroom. They described instances where racial disparities were prevalent in how judges and prosecutors treated their indigent clients. When discussing the data from private attorneys, their views were more mixed. Van Cleve describes the process of finding the underlying meaning to the answers of defense attorneys. Discussing race and racism is so sensitive in the courts that many of these

defense attorneys did not provide clear answers or contradicted themselves while answering. While Van Cleve analyzes these views and notes that these questions force the respondent to pick a side, and the questions can be deceiving (Van Cleve, pg. 98).

Throughout the court process institutionalized racism is prevalent through pretrial detention and bail, charging, plea bargaining, and trials. In regard to bail, Black and Latino people are more likely to be detained without bail. According to the Vera Evidence Brief, “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention;” by Digard and Swavola (2019), a 2010 study of drug cases in a midsized Pennsylvania county found that black people were 80 times more likely to be denied release on recognizance than white people. The phase of the court system where pretrial detention or monetary bail is set allows for an opportunity for a judge to be influenced by racial stereotypes (Digard and Swavola, pg. 7). Whether the bias is conscious or unconscious, a judge has a lot of discretion that allows them to make decisions based upon racial stereotypes, such as a person of color posing as a high risk, and a liability for the court. When an individual is held in jail waiting for trial because they were either denied bail or could not afford it, there is a perception that these individuals are already guilty. A 2018 study of administrative court records for more than 420,000 people in two large counties found that people being held on pretrial detention for more than three days increased the likeliness of them being found guilty by 24 percent (Digard and Swavola, pg. 4). Being held without bail in felony cases not only increases the chances for a guilty conviction, spending more time in jail lessened the chance of the felony charge being reduced to a misdemeanor. Also, individuals who are held without bail are more likely to plead guilty and accept a plea bargain, regardless of how strong their defense is or their innocence (Digard and Swavola, pg. 4). Due to pretrial detention,

individuals are much more likely to be found guilty during trials as they are perceived as guilty for already being in jail.

The Role of the Prosecutor

As Van Cleve discusses the prosecutors interviewed in her book and how they view themselves as “godly” and the only ones on the right side of justice, it is important to analyze the true role of the prosecutor. The prosecutor holds the most important role in the criminal justice system. These individuals control the possible outcomes of all cases through the decisions of charging and plea bargains. In the article, “The Power and the Discretion of the American Prosecutor,” by Angela J. Davis (2005), prosecutors ultimately control the system and can predetermine how a case turns out. Prosecutors have the ability to charge an individual as much or as little as they want, away from the public eye. For example, if an individual were to be arrested with cocaine found on them, a prosecutor could have an array of charges waiting for the defendant. The prosecutor could dismiss the case even if there was sufficient evidence, or could formally charge the individual with possession, possession with intent to distribute, and distribution of the drug (Davis, pg. 2).

Racism in Massachusetts’ Courts

The report from Harvard Law School by the Criminal Justice Policy Program titled “Racial Disparities in the Massachusetts Criminal System”, outlines racial disparities throughout the entire criminal justice process focusing on the state of Massachusetts. In this study, research is provided to demonstrate how police officers in Massachusetts disproportionately stop, frisk, search, and interrogate people of color. For a defendant to enter the judicial system, there must first be criminal complaints brought out by an arrest. A nationwide study of nearly 100 million

traffic stops found that police stopped more Black drivers than White drivers (Bishop, et. al., pg. 18). An arrest is the gateway to the judicial system; therefore, these disproportionate statistics of traffic stops are an example of the overrepresentation of people of color throughout the judicial system. In Massachusetts in particular, a study from 2007 to 2010 of Boston Police Department's traffic stops detail that although only making up 24% of the city's population, Black people were subject to 63% of the Boston police officers encounters with civilians were an individual was stopped, frisked, searched, or interrogated. Another study that was conducted on the Boston Police Department showed that Black and Hispanic drivers were more than twice as likely as White drivers to have their car searched as a part of a traffic stop (Bishop, et. al., pg. 18). This study showed that the disparities in these traffic stops are more consistent with racial bias than with criminal conduct.

This study by the Criminal Justice Policy Program at Harvard Law also provides details on the pretrial phase of the criminal justice system. In regard to an arraignment, this is the part in the judicial system where a defendant goes to the court to hear the charges filed against them, enter their plea, appoint counsel, and determine pretrial release. In the state of Massachusetts, individuals awaiting trial are to be released on their own recognizance unless the court determines that they would be unwilling to return for their court date, (Bishop, et. al., pg. 22). During this pretrial phase, the courts will assess certain factor such as the nature of the offense, community and family ties, employment, financial resources, and prior criminal charges. A prosecutor is also allowed to ask the courts for a person to not be granted bail through a dangerousness hearing, pending evidence that shows the individual is a danger to others and is being accused of a violent crime. Once the judge sets bail, if a defendant is able to pay the said amount, they can leave and return for their next court date. Those who cannot pay bail are

detained in local jails until their court date. In this study, the authors determine that bail is set in slightly higher percentage of cases involving Black and Hispanic defendants, along with Black and Hispanic defendants being detained without bail compared to White defendants (Bishop, et. al., pg. 23).

In the book, *Privilege and Punishment: How Race and Class Matter in Criminal Court*, written by Matthew Clair (2020), this book is based on interviews conducted in Boston, Massachusetts between fall 2015 and winter 2019. As a middle-class black man with no criminal record, Clair discusses how his identity motivated the study from witnessing his cousin in court, and how this played a role in how defendants and lawyers interacted with him. Between fall 2015 and summer 2017, Clair had spent more than one hundred hours in the eleven courthouses that serve Boston and nearby Cambridge (Clair, pg. 25). As a city that is racially and socioeconomically diverse, along with being unequal due to the disproportionate number of arrests, charges, convictions, and incarcerations of racial minorities, Boston is a useful setting for examining attorney-client relationships. Black and Hispanic people are overrepresented in Boston's district and superior court relative to their demographics within the city's population. These inequalities stem from a long history of racism in Boston and its criminal justice system, starting with the broken window policing in the 1980's. The Boston Police Department engaged in this style of policing in the 1980's similar to those across the United States. This policing took place in predominantly black neighborhoods, where police would arrest an individual for minor offenses. Due to this style of policing, low-income communities of people of color such as Roxbury, Dorchester, and Mattapan were subject to targeting by police (Clair, pg. 27).

Another key aspect of this piece of literature is what the author describes in regard to privileged versus poor defendants. Poor and disadvantaged defendants often experience

withdrawal in their relationships with their lawyers due to a mistrust. Some of these defendants do not trust their lawyer's legal expertise and use their own knowledge instead as they feel that the system ultimately is ignoring their needs (Clair, pg. 28). Defendants that also appear to be withdrawn from their legal experience show little interest or care in their case, often ignoring their lawyers, skipping court dates, and cancelling meetings. These individuals appear to care less because they have been through the court system previously and have a severe mistrust when it comes to listening to their lawyers (Clair, pg. 28).

For defendants who are privileged, these individuals have access to social ties with law enforcement, have a lack of experience with the law, and have the money to appoint a lawyer of their choosing. These wealthy defendants acknowledge their ignorance regarding the law and ultimately let their lawyer run their case (Clair, pg. 29). These defendants have opportunities to access resources that disadvantaged defendants do not. They have money to choose their own attorney who could have a stellar reputation in the courts. A disadvantaged defendant cannot afford this and must settle for a court appointed public defender. Privileged defendants rarely feel that they are disrespected or mistreated in court, as they tend to listen more to their lawyer's advice. The disadvantaged mistrust the legal system because they are given the bare minimum of justice, while privileged defendants have a much easier time in court.

The difference between privileged and disadvantaged defendants is crucial to understanding how racism is prevalent within the court system. Their defense attorneys must navigate their own relationships with other court officials, not just with their clients. Defense attorneys understand effective representation to mean the mitigation of their clients' legal sentences, not necessarily in the best way to pursue justice (Clair, pg. 29). Lawyers and judges typically silence defendants who do not actively participate in their own defense chalking it

down to the idea that they simply do not care. Court officials who see defendants delegating all authorities to their lawyers are often treated better within the justice system. As race and class is often a factor in determining withdrawal or delegation, the wealthy have a much smoother transition into the court system. Justice is not always served simply by providing effective legal representation (Clair, pg. 28).

The purpose of exploring past literature on racism in the courts is to provide an understanding on how it was established, and how it affects individuals in the court. It is especially important to explore the themes of institutionalized racism, and race as a social concept to see how they intersect in the courts. With all of this previous literature discussing racism in the courts as a whole, the focus of this research is to closely examine one county. Through using previous literature on racism in the court, one can make connections through the interviews and how these answers relate to other literature.

Methods:

To demonstrate how racism is prevalent in Barnstable County courtrooms, the most effective method to garner research was to interview local attorneys, who work in the court every day and are exposed to different people and crimes constantly. Before I was able to search for candidates to interview, I had to seek approval from the Institutional Review Board (IRB). To get approval from the IRB, I had to complete an online training and obtain a certificate demonstrating that I had completed all training necessary to submit an application. Next, my mentor for this thesis had to submit an application to the IRB explaining my project, who I would be interviewing and a list of sample interview questions. After approval from the IRB, I

used a personal contact that I had who is connected to the court system send out an email to the bar association of Barnstable County.

In depth interviews with local attorneys was the best way to explore racism in the courts. By each interviewee being asked the same questions, the differences among their answers along with the similarities provided substantial information on this topic. By interviewing attorneys, I was able to obtain a better understanding of the court process, along with the frustrations of these attorneys. All of these interviews were conducted over zoom meetings, each lasting roughly 40 minutes. The advantage of these zoom meetings was it allowed for a personal connection to take place. As it was difficult to meet with them in person, being able to see their faces was helpful to spot the signs if someone was uncomfortable with the questions. This interview process over zoom allowed for a more personal connection to be made, leaving the interviewee to feel completely comfortable during the process.

From this email that was sent, I had ten attorneys reply that they would be interested and willing to assist with the research. Out of these ten individuals, one being a prosecutor, only five attorneys were able to schedule and complete interviews. The only prosecutor that responded to the email expressing interest was unable to be reached and therefore did not participate. Due to the ongoing pandemic and being sick with COVID during the timeline for my interviews, I was unable to visit the courtroom and observe actual proceedings. I used interviews with defense attorneys over zoom, as this was the only way I could obtain my own research due to the limited number of people in the actual courts.

The same set of questions were asked to the five defense attorneys who were willing to be interviewed. After I started the zoom call with each attorney, I asked their permission to record these interviews and place them on a secure flash drive that only I would have access to. I

let each of them know that their identity would remain confidentially, thus removing all pronouns and names from the interviews. The interviews consisted of questions about what their caseload is like, what the most common type of crime they defend is, what the demographics of their clients are, how they delegate their time and resources, and other general questions. As the topic of racism is extremely sensitive, the approach to these questions was slow to make the interviewee feel more comfortable. The most important questions asked during these interviews was if they believe racism exists in the courts, if they had witnessed it in Barnstable County, if judges and prosecutors are fair to every defendant, if they believe the criminal system is unfair to persons of color, and what they have done if they witnessed racism, along with how to reduce racial disparities in the courts.

Discussion and Findings:

As racism prevails throughout the entire United States judiciary system, the focus of this individual research is to examine closely how racism is prevalent in the Massachusetts court system, with a heavy focus on Cape Cod. Barnstable County is predominantly a white area, (92% of the population) white people make up most court officials, defendants, and jury members. That said, it is worth noting that one of the zip codes with the highest rates of cases per capita in the county is also disproportionately Black and Latino (see Bishop, et. al. pp.16-17). However, I will argue that the issue in this county is not ultimately the number of people of color and minorities in the courtroom, but rather the treatment of these individuals.

Out of the five interviews that were conducted, three individuals believe racism is prevalent in the courts. The two individuals that believed that although racism is prevalent in

society, it does not happen on Cape Cod as it is a predominantly white area. According to the interviewee, “Racism is prevalent in our society and other courts... But it doesn’t happen on Cape Cod.” When this individual was asked why they believe racism is not prevalent in Barnstable County, the attorney said, “How can racism happen in an area where the people are mostly white? Most of my clients are white men...” When they discuss how they defended a client that belonged to a minority population, a young African American male, this individual says that “I defended a young African American male who was stopped by police because he looked similar to an individual that committed a crime. When he showed up to court, his case was heard, and he was found not guilty.” They continue on to say that “If there was racism in the courts, he wouldn’t have been found not guilty!” The issue with this answer was not whether or not the client was found guilty, it was the fact that the client was brought to court over something so miniscule, that a white individual would typically have dismissed. It would have been more beneficial to the research if this attorney provided what kind of crime the defendant was charged with, instead of using a not guilty verdict as proof to racism not existing in Barnstable County courts.

Once again, Van Cleve reflects on how a person of color, no matter who they are could be seen as a criminal deserving of punishment based upon their skin color. Realistically, in Barnstable County this is true as well. The long-held stereotypes of Black people and other minorities that they are dangerous, criminal, etc., is still held in the courts today. The client from this interview was a young, Black male, already having a target on his back due to being a minority in a white area. He was charged by police with disorderly conduct, after being accused of running away from a bar fight that he had not actually been a part of. The officers had mistaken him for their perpetrator, and because he fought with them that he did not do anything,

they arrested him anyways and said he was engaging in disorderly conduct. As a person of color, he was already seen as criminally deviant, and if he was white, he likely would not have been arrested at all. One of the most notable things that Van Cleve mentions in her work is the white privilege pipeline. According to the text, “whiteness is a veil of privilege that not only protected one from abuse but also changed the very meaning of criminal charges and the sanctions they warranted,” (Van Cleve, pg. 65). The interviewee suggests that this does not exist, and the defendant was simply dismissed in court, saying “no harm, no foul!” However, the harm done was the fact that he was even arrested and had to appear in court for this, when he did nothing wrong. The interviewee failed to look at the actual meaning of the arrest and focused on the idea that the lack of sentencing makes up for the arrest being a result of a racist action by police.

Once again, when the question was asked to the subjects of these interviews, “Is every individual treated fairly in this courtroom?” some of the interviewees were quick to dismiss the implications of this. I could sense that many of them were uncomfortable with this question, almost as if there was a right or wrong answer. Similar to Van Cleve’s interviews, the interviewee felt as though they were being forced to pick a side, when in reality there was no right or wrong answer. Many of the defense attorneys answered that they do not think the system is fair to every defendant but did not discuss it further than yes or no answers.

However, some of the interviewed defense attorneys brought up the issue of mental illness that is extremely common in the courts of Barnstable County. When the attorney who brought up the issue of mental illness being was asked if they believed race intersected at all with this issue, they were quick to deny it. The interviewee says that, “The issue in the court is not race... It is mental illness. I don’t believe that there is any racism as far as I can see in this court.” They continue on to say that “If I have a client of color who is mentally ill, they are not being

treated unfairly because of their race, it's because they are mentally ill.” They noted that they did not see any intersectionality between the two.

In a study conducted by Baloch and Jennings (2019), research indicates that throughout the United States prison system, black males are shown to have higher rates of incarceration, along with higher rates of mental illness or other disabilities. Due to psychological distress, individuals with mental illness are much more likely to be involved in the criminal justice system. Being a person of color with a mental illness puts this individual at an even higher risk of being involved in the criminal justice system. In this study, researchers sought to examine the number of inmates in United States prisons with a mental or physical disability. Out of the 30,269 inmates from this study, 53 percent of African Americans, 46 percent of Whites, and 1 percent of Hispanic males suffered from some kind of disability. About 92 percent of inmates reported having a mental illness, while 8 percent reported a physical disability (Baloch and Jennings, pg. 602). Throughout this study, African Americans had the highest rate of mental illness when compared to White males also in the prison system. The white males from this survey had a much higher report of having a high school diploma or higher at 68 percent. The results from this study indicate that being an African American inmate significantly increased the likelihood of having a mental illness (Baloch and Jennings, pg. 602).

From the other three interviews that were conducted, the public defenders and one bar advocate were more than willing to share their views and experiences dealing with racism in the court system. When the interviewees were asked if they had ever experienced racism in the court system, they all replied that they had firsthand witnessed it. Two of the public defenders were quick to say that they believe the issue of racism does not start in the court, it starts with police officers on the street. These individuals reported instances of their clients being stopped,

searched, and arrested at far higher rates than their white clients. The issue arose when discussing this that the police departments on Cape Cod are not as compliant when it comes to sharing their records of these stops, which created a problem in court. The interviewees said that their client may have been stopped continuously and targeted by the police, however data only shows that one time they were stopped and arrested. From the interview, the public defender said that, "It is frustrating that these stops are not all documented... We can't use them in court or even talk about them because they don't exist." In a much smaller area that is predominantly white, it is much easier for police departments to "get away" with this type of behavior because it is not questioned as much. When these two public defenders were asked in their interviews how they handle cases when their client is being treated unfairly due to their race, they said that they often do nothing. They said that "I can't just accuse a well-respected Judge of being racist... Usually I have to just bite my tongue and keep trying to fight the case without upsetting anyone." They said that they might see this happen, and ultimately ignore it due to not wanting to create issues with the judge or the prosecution. Therefore, they are not advocating for their defendants to the best of their ability out of fear of being crucified by questioning a judge.

On the other side, while interviewing a bar advocate with a private contract for the state, they were much more open to discussing this. They said in the interview, "Anytime I see a judge or a prosecutor being racist, I call it out! That is my client, and it is my job to protect them!" One of the issues talked about in this interview along with the others is that almost all of the judges in Barnstable County are former prosecutors. While interviewing this individual, they discuss how they feel defense attorneys have an unfair chance. They said, "Most of the judges here used to be prosecutors, and most are friendly with the DA's office... When I walk into court, and I know this judge plays golf with the DA, I know I don't have a fair chance." Though not intentional, a

judge's subconscious bias allows for them to pick a side without meaning to. As Van Cleve notes, prosecutors see themselves as the "good guys" who bring justice to the victim and puts away monsters. The prosecutors in this book say that they are on the right side of justice, and you can either be a good guy or a bad guy (Van Cleve, pg. 71).

In Van Cleve's research, the prosecution plays a winning game. As prosecutors generally have this idea that they are the good guys, this leads to bias from judges who previously were prosecutors. When this idea is already driven into them, it is much more difficult to look at the cases clearly and in the best interest. This subconscious bias can affect cases by the assumption that all defendants are inherently bad. This is the struggle that the bar advocate who was interviewed faces in court. They said that oftentimes the defendants are seen as guilty and they are looked down upon just by being a defense attorney who advocates for their clients.

As this interviewee was much more willing to dive into the topic of racism in the courts, another interview that stood out based on the experiences encountered outside the courtroom was crucial. This interview started off much easier than some of the others, with this public defender being opened to discussing racism, but noting that the problem starts with police. The interviewee stated in this interview that the only reason why racism is brought into the courtroom is because it is brought in by police. The blame was almost completely shifted to the police, not the court in this interview. They said that:

"You know, I'll be driving down the street in my town and see a police officer with a young black kid pulled over...All of a sudden three cruisers pull up behind him!" They go on to say that "Police are the problem. They bring these kids in over and over again... Maybe because they finally found drugs in the kid's car after pulling them over 13 times! I mean I am not saying it's okay to have drugs in your car but come on! These kids are clearly targeted!"

Going off of this, in the report on Racial Disparities in the Massachusetts Criminal System (2020) by the Criminal Justice Policy Program at Harvard Law, research shows that black people are stopped and searched by police more than white people. Per the state of Massachusetts, a report from the Boston Police Department's civilian encounters from 2007 to 2010, despite making up 24 percent of Boston's population, black people made up 63 percent of encounters where police stopped, searched, frisked, or interrogated a civilian (Bishop, et. al. pg. 21). Another study conducted on the Boston Police Department's traffic stops found that Black and Hispanic drivers were more than twice as likely to have their car searched as part of a traffic stop. Similar to this, the public defender in this interview recalls driving down the street and seeing a young, black male stopped by the police in Sandwich. Three cruisers showed up behind this car, with the young male being thrown out of the car and searched. The man was searched, and officers found nothing in his vehicle, but the public defender notes that if this was a white person driving, three cruisers would not have shown up and the car would not have been searched.

This interviewee recalls countless times where they have dealt with a similar situation with their client in court. The police see them as a target, as being such a small minority in a small place. I had asked this public defender what they do when this happens in court, where it is so evident that their client was targeted. They said that "Honestly... I can't really do anything. I mean you can't just accuse a judge of being racist! I unfortunately have to just try to ignore it." They say that they try their best to defend their client fairly, but it is difficult to get a fair outcome when they cannot question the fairness of the case.

When all of the interviewees were asked what can be done to stop this, many were not as hopeful that racism would ever leave the courts entirely. One of the public defenders in particular

had an answer that stood out more than the others. They believed that racism most likely will not end, however continuing to educate legal officials would be a step. This individual said that, “It’s hard to say if this could end or not... I think that maybe when the older judges fade out racism will probably go with it... You know? It’s just the time period they were raised in.” This public defender as well was much older and went to law school much later in life as well. They recall a time in law school when they said something in class that upset a younger black male. They recall the experience by saying, “I did not even realize that I had upset him! He asked to speak to me after class and I agreed. When he told me why I had upset him, I realized I would not ever fully understand because I’m white.” Interestingly, this public defender says that;

“This was kind of the point where I realized racism does exist in the courts, I just haven’t seen it because I’m white... I know it exists, but I don’t think we have it on the Cape.”

Per the interviews conducted during this research, attorneys suggest that majority of their cases involve white defendants. As noted, due to the population in Barnstable County, the demographics would support this statement. With 92.2 percent of Barnstable County’s population being white, it was no surprise that majority of crimes and court proceedings involved a white defendant. Rather, the issue is not the number of defendants of color in Barnstable County, it is the way that these defendants are treated as opposed to white defendants.

In conclusion, to summarize the data found through conducting these interviews was that there was a clear distinction that racism does occur in Barnstable County courts, but many of the interviewees were reluctant to discuss this topic, besides the one bar advocate interviewed. All acknowledged that racism is prevalent throughout the court system as a whole, but few were comfortable enough with discussing it in their own courts. Two of the interviews completely disregarded the topic of racism and were quick to dismiss this as an issue. The examples given as

to why this was not an issue pointed in the direction of subconscious racism without them even realizing so. Although noting most of their clients are white, the other interviews suggest that the treatment of the very few defendants of color they represent is much different than the white defendants. Another issue brought up by all public defenders was a jury of all white individuals that happens continuously. When being charged with a crime in Barnstable County, a defendant is not getting a jury of their peers, as more often the jury is all white. The attorneys want to note that this is not necessarily a problem of the courts, it is simply who arrives for jury duty. However, a fair trial cannot take place with a jury not compromised of the defendant's peers.

Conclusion:

In conclusion, the research that I have done on the topic of racism in Barnstable County's judicial system is an excellent start to analyzing racism in the courts. As research has primarily focused on historical aspects of racism throughout the United States and the major courts, it is important to acknowledge this in all courts. Each court should be analyzed, no matter the demographics of the area's population. To begin to combat racial injustices in the judicial system, future research should consist of looking in depth at all courts across the United States.

When the interviewed defense attorneys were asked how to combat racial injustices in the courts, all of them suggested the ideas of educating new and old generations of lawyers, judges, and court officials. Many also said that racism in the courts will fade once older generations of legal officials fade. However, addressing racism in the courts cannot wait. Each court needs to be held accountable for their actions, along with police officers who are the gateway into the judicial system.

In regard to future research, there needs to be studies and interviews conducted with the prosecution. One of the major limitations of this research is that no prosecutors were interviewed. Prosecutors, judges, and other court officials need to be interviewed and studied along with defense attorneys. Having these individuals studied would provide much more substantial research on this issue in the courts. The research on racism in the courts cannot end here. It needs to be researched more frequently, to hold these individuals accountable for unfair treatment of racial minorities. As the population of Barnstable County is predominantly white, it is easy for people to assume that racism does not exist within these courts. However, in this case, it is not necessarily the number of racial minorities circling through the courts, it is the difference in the treatment between white defendants and defendants of color that causes concern.

To potentially solve the issue of racism in the courts, defendants need to be heard and allowed to voice their opinions. As Clair discusses, just providing individuals with counsel is not justice. Effective legal representation does not guarantee that a defendant will be treated fairly within the courts. With disadvantaged defendants typically being withdrawn and distrustful, it is important for the defendant to be allowed to voice their own concerns and opinions rather than being silenced by their attorneys (Clair, pg. 180). Having legal representation is not justice enough when defendants are being ignored and silenced in court.

The courts need to be held accountable for unequal treatment. As there have been many criminal justice policies coming in to place over the years, such as the First Step Act of 2018 to reduce incarceration, and we need to do more. Simply getting incarceration sentences reduced is not enough. Derek Chauvin a white police officer who murdered George Floyd over being suspected of having counterfeit money was given a slap on the wrist for this murder. When a white man murders a black man, society does not bat an eye, but when a black man murders a

white man, he is given the maximum punishment and made to be a monster in the eyes of the public.

Let defendants voice their opinions and concerns in court and hold all legal personnel to the highest standard. If we start off by doing this, we can be in a good place to fight this. Racism has existed in our courts for far too long, and it is time to end this. Educate the courts, hold them accountable for their actions, and provide people of color with the same resources in the courts that white defendants have. We are far too advanced as a nation to have all people not be treated fairly, and finally let justice be served for all, not just for the white and wealthy.

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Appendix A: Interview Questions

Interview questions that were asked to each defense attorney in the zoom interviews:

- What made you want to become a criminal defense attorney (and/or public defender)?
- What is your caseload like?
- What are the most common types of cases you handle?
- What are your clients like? (probe as necessary for race, class, gender, etc)
- How do you decide how much time/energy/other resources to devote to each case?
- How do you try to ensure a fair outcome for your clients? What challenges do you and your clients face?
- Do you think judges and prosecutors are fair to every defendant? Why or why not?
- Is the CJ system unfair to persons of color?
- Have you read the CJPP/Harvard Law report on racial disparities in the courts? What are your thoughts on it?
- Have you witnessed anything in the courts that you would describe as racist? Can you tell me about it?
- How do you and your clients navigate these sorts of things?
- What do you think can be done to address racism in the courts?
- What can we do to reduce racial disparities in case outcomes?

Appendix B: Reflection on the Research Process

As with any research, there are certain things throughout the process that I wish could have been done differently. Firstly, although I was able to get substantial interviews through zoom, it was challenging to not actually be in a courtroom. If I had been in the court, I would have been able to experience how racism prevails in person, rather than relying on solely interviews. With the pandemic, I was unable to meet with defense attorneys in person, therefore had to be online with them. It was challenging to not be in person with these individuals while they were being interviewed because I could not sense if they were feeling uncomfortable with questions or know if they were fully paying attention. A few of the interviews seemed rather rushed, which is typical on an online platform.

Although there were many challenges while obtaining research for this project, I did have a variety of positive experiences as well. Majority of those I interviewed provided great insight on the topic of racism in the court, and it was more convenient for the attorneys to be able to meet over zoom. I was very flexible with scheduling these interviews, and because of this I was able to spend more time on certain interviews. A few of the attorneys were extremely open and willing to discuss how they have experienced racism in the courts, despite not being in person.

After conducting my five interviews, I started to put together certain themes that were prevalent throughout almost all of the interviews. The biggest theme from these interviews was the shift of blame from the courts to the police departments. Rather than spending more time

discussing the police, I wish that I had asked questions about how many individuals accused of a crime take a plea bargain instead of going to trial. I wish that I had stayed more on topic instead of going on a tangent. If I had done more interviews, I would have interviewed prosecutors, judges, and police officers to get more of an unbiased viewpoint.

Because I did not interview anyone other than defense attorneys, I was not able to compare themes as well. As most of the defense attorneys repeated the same things throughout the interviews, it would have been more beneficial to interview some prosecutors, and even judges. If I had more time to research, I would have interviewed individuals from every part of the criminal system to determine how their involvement affects racism in the courts. For further research purposes, I would have also asked more questions about how many defendants have a bench trial or a jury trial, asked for actual documents from the court regarding cases and hearings, and done more research on Barnstable County's police traffic stops. Not only would this have provided more substantial research, it would have also been more beneficial in regard to analyzing racial disparities.